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THE ORATIONS

OF

DEMOSTHENES

AGAINST LEPTINES, MIDIAS,

ANDROTION, AND ARISTOCRATES

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TRANSLATED, WITH NOTES, ETC.

BY

CHARLES RANN KENNEDY

LONDON
GEORGE BELL & SONS
1898

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THE

ORATIONS OF DEMOSTHENES.

2703 Cl 885

THE ORATION AGAINST THE LAW OF LEPTINES

THE ARGUMENT.

Leptines in the year B.C. 356 passed a statute, enacting that no person in Athens, whether citizen, denizen, or alien, should enjoy exemption from the ordinary public burdens, saving only the descendants of Harmodius and Aristogiton; and that it should not be lawful for the people in future to grant any such exemption; and that whoever petitioned for it should be liable to disfranchisement and other severe penalties. Such was the substance of the statute, fragments of which are found in different parts of the speech of Demosthenes.

The public burdens to which the law of Leptines principally related are the offices, which men of competent fortunes at Athens were liable to serve, of Choragus, Gymnasiarch, and Feaster of the tribe: of which a brief account is given in an appendix. Exemption from these burdens was sometimes granted by popular decree to men who had deserved well of the state; and not unfrequently it was extended to their children. About the time that Leptines introduced his law it seems to have been thought, that the people had granted this distinction too inconsiderately and too often, and that many unworthy persons were in the enjoyment of it. The commonwealth was greatly impoverished by the losses of the Social war, and difficulties occurred in providing for the expenses of those festivals which contributed so much to the instruction and amusement of the Athenian people. Men whose means were not affluent considered themselves aggrieved, if they were selected to bear these charges, and endeavoured to shift them on their neighbours, while they looked with an evil eye upon a fortunate few, who possessed the privilege of immunity. Leptines introduced his law principally as a measure of relief, that the state might not be deprived of services which she had a right to exact, and which the privileged persons were well able to perform. He contended, that the burden of these services ought to fall equally upon all; that persons who had obtained immunity without having

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deserved it, or had afterwards proved themselves unworthy of it by their life and conduct, ought to be deprived: and as the people were so liable to make improvident grants through the influence of deceiving orators, it was better that they should divest themselves of the power. That there was no necessity for retaining it, was proved by the example of Lacedæmon and Thebes, and also by the practice of their own ancestors, who never adopted this method of rewarding distinguished citizens. There were other rewards for merit, such as crowns, statues, and maintenance in the Prytaneum, which the proposed law would not affect: it took away only those which were of little value for the honour they conferred, and the existence of which was injurious to the state. Such were the arguments by which Leptines induced the people of Athens to accept his law. Before the year had expired, an indictment was preferred against him by one Bathippus, for the purpose of quashing the new law as unconstitutional and improper, and also of punishing him as the author of it. Bathippus died before the indictment was brought to trial; and the advocates who were associated with him dropped further proceedings. After the expiration of the year, when by the law of Athens Leptines himself was safe from all personal danger, though his statute was still liable to impeachment, (as explained in Vol. II. Appendix VII.) Aphepsion, the son of Bathippus, and Ctesippus, the son of Chabrias, undertook to procure its repeal by a jury. Ctesippus was personally interested in the matter; for he had inherited from his father the immunity which was abolished. These young men, not feeling themselves equal to the task of pleading in court, engaged the assistance of Phormio and Demosthenes; a practice which was very common at Athens. On the other hand four advocates, besides Leptines, were appointed by the state to defend the law. Aphepsion, as the elder of the two prosecutors, being entitled to begin, Phormio opened the case for him. Demosthenes followed on behalf of Ctesippus. A sketch of his principal arguments is subjoined:

It was not just, (he contends,) to deprive the people of their power to bestow honours because they had sometimes granted them improvidently. On the same principle all their constitutional rights might be taken away, because they were not always wisely exercised. They should rather make regulations to prevent the people from being deceived in future, and for punishing the authors of the deceit.

It was better that a few unworthy persons should receive honours, than that no honour at all should be conferred: for in the last case there was no stimulus to patriotism.

It would be disgraceful to violate the national faith by revoking their own gifts. No pecuniary gain could recompense them for the dishonour that would attend such an act. People should maintain the same integrity in their public as in their private dealings. It had been the practice of the Athenians in former times to prefer faith and justice to every other consideration.

The gifts of a democratical government had formerly been regarded as more secure than those of despots and oligarchs. The law of Leptines would deprive them of this distinction.

The advantage that would accrue to the state by abolishing the

immunities had been greatly overrated. The number of persons enjoying them was very small. There was no exemption allowed from the trierarchy or the property tax, which were the most important of the public services. Those who were called upon to serve as trierarchs were by the ancient law free from the ordinary duties; so that the richest citizens would not be reached by the law of Leptines. The public treasury would gain nothing at all by it; for the money spent on the offices of Choragus, &c. went merely to the shows and amusements. The commonwealth would really benefit by the savings of the few privileged parties; because they would have larger means of contributing to the war-taxes, which provided for the national safety.

The general words of the law, which took away immunities of every kind, and from all persons, whether citizens, denizens, or aliens, would include many distinguished foreigners, who had exhibited their friendship to Athens in signal acts of generosity, and had received in return the grant of exemption from such imposts and payments as they would otherwise have been liable to. Among other examples he specially notices the case of Leucon, king of the Bosporus, from whose country the Athenians then exported a large quantity of corn duty-free, an advantage of which the new law would deprive them: and Epicerdes, the Cyrenæan, who had made gifts of money to Athens in the times of her greatest distress. Not only would it be an act of base ingratitude, to requite such benefactors in the manner proposed, but it would discourage all other people who might be inclined to befriend them in the hour of need.

However unworthy some persons who enjoyed the immunity might be, it was too late to raise that question now. The time for such inquiry was when the honour was conferred. To take it away after it had been given would look like envy and malice. Moreover, the state was not to judge of merit on the same principles as a private individual. A public benefactor might deserve to be rewarded by his country, though his private character was not free from reproach.

Conon and Chabrias were noble examples of men who had deserved well of their country, and whose children ought not to be deprived of the rewards bestowed upon them for acknowledged services. The orator recounts these services at some length. Conon had been honoured by foreign states, who never thought of rescinding what they had done in his favour. Would the Athenians be less grateful to their own citizen than foreigners had been? Chabrias had lost his life in battle; and even the Chians, against whom he fought, had not revoked the honours which they had voted to him in former times. It would be peculiarly cruel to rob his son of a privilege earned by the very valour which had made him an orphan.

The parties impeaching the law had themselves introduced another, which, while it avoided the injustice done by Leptines, would correct all the abuses of which he complained; for it secured to well-deserving persons the enjoyment of their fairly-earned privileges, but authorized legal proceedings to be taken by which the undeserving would be deprived. They had adopted the constitutional course, of impugning the adverse law and at the same time pro-

posing another in its place: Leptines had deviated from the constitutional practice, by passing an act at variance with another existing one, which declared "that the gifts of the people should be valid." There were some other legislative regulations which Leptines had not complied with. The same verdict which repealed his law would establish the one proposed in its stead: but, if there was any doubt upon this point, they pledged themselves, if necessary, to get it passed.

With respect to the argument, that there were no such immunities at Thebes or Lacedæmon, he shows, that the laws and customs of those states and the temper and feelings of the people were so different from the Athenian, that they formed no proper subject of comparison. And as to the practice of their ancestors: if they did not give immunities, they gave other rewards to eminent citizens. Customs varied at different eras: but at all events their ancestors did not take away what they had once granted.

It was true that crowns, statues, and maintenance in the Prytaneum were left untouched by Leptines; but the public faith would equally be shaken, and the higher honours would be rendered insecure by the abolition of the smaller. Besides, it was to the advantage of the state, that there should be different classes of honours to reward different degrees of merit. And it was a poor consolation to those who lost what had been given them, that there was something better left for others to enjoy.

Leptines would endeavour to mislead the jury by classing the ordinary official services among those of religion. They were not to be confounded. Had the two classes of duties been the same, the descendants of Harmodius and Aristogiton could not have been excepted from the operation of the law: for their ancient grant of immunity did not extend to religious services.

It would be said also, that there were multitudes of foreigners claiming immunities under false pretences. Demosthenes cautions his hearers against being deceived by any vague assertions of this kind: after which he returns to general topics, urging them to rescind a law which could answer no good purpose, and was injurious to the national character. He shows by reference to their laws and customs, that the Athenians had always been distinguished for their love and admiration of virtue, and also for justice, generosity, and magnanimity. They should maintain that honourable reputation, and not forfeit their title to it, in order that Leptines might wreak his malice upon some private enemies It might be better, he suggests, even for Leptines himself to abandon his law, lest by abolishing the rewards of merit he should make it appear that he had no desire to be a benefactor of his country.

He shows some special reasons for not listening to the advocates who were associated with Leptines, and urges one objection which applied to all of them, viz. that they had been appointed for a similar purpose before, and the Athenian law did not allow a man to act in that capacity more than once.

The statute was bad on this further ground, that it visited with several penalties the trivial offence of petitioning the people for a privilege,

contrary to an express law, which forbade more than one punishment to be inflicted for any crime, even the most heinous.

Lastly, it was highly reprehensible in seeking to bind the people for ever to a practice which might not suit all times and circumstances. The future was uncertain: it was impossible to see what measures might become necessary hereafter. Citizens like Harmodius and Aristogiton might again be needed. They should not be forbidden to reward such men with the same honours as their predecessors. Leptines had not taken the casualties of human life into account: the spirit of his legislation was arrogant and offensive to Nemesis.

He concludes with a brief peroration, summing up the general advantages to be obtained by a decision in his own favour, and the disadvantages of an opposite course.

We are assured by Dio Chrysostom, that these arguments prevailed with the Athenians, and that the law of Leptines was repealed. Some doubt has indeed been thrown upon this statement by Christopher Wordsworth in his interesting work upon Athens, which I shall notice further in the first Appendix to this volume.

It was chiefly, men of the jury, because I deemed it good for Athens that the law should be repealed, but partly on account of the son of Chabrias,[1] that I engaged to support these men to the utmost of my ability. It is plain enough, men of Athens, that Leptines, or whoever else defends the law, will have nothing to say for it on the merits, but will allege that certain unworthy persons obtaining immunity have evaded the public services, and will lay the greatest stress upon this point. I will pass by the injustice of such a proceeding—for a complaint against some to take the honour from all: for it has in a manner been explained,[2] and is doubtless acknowledged by you: but this I would gladly ask him.—Granting most fully, that not some but all were unworthy, why did he consider that you and they were to be dealt with alike? By enacting that none should be exempted,

[1] Ctesippus, the son of Chabrias, degenerating from his father's virtues, became notorious as a spendthrift and a profligate. After squandering all his property, he even sold the stones of his father's monument, which the Athenians had erected at an expense of a thousand drachms. His name became a by-word among the comic writers. Phocion, as we have seen (Vol. II. p. 324), vainly endeavoured to reform him. It does not appear whether he had exhibited his vicious propensities at the time when Leptines passed the law. Plutarch says, that Demosthenes undertook the present cause to please the mother of Ctesippus, whom he was then courting; though he did not marry her after all, but espoused a Samian woman. Dinarchus asserts that he lent his services to Ctesippus for a fee, as he did to many others.

[2] By Phormio, in the opening speech.

he took the exemption from those that enjoyed it; by adding that it should be unlawful to grant it hereafter, he deprived you of the power of granting. He cannot surely say, that, as he deprived the holders of their privilege, because he deemed them unworthy of it, in the same manner he thought the people unworthy to have the power of giving their own to whom they pleased. But possibly he may reply, that he framed the law so, because the people are easily misled. Then what prevents your being deprived of everything, yea, of the government itself, according to such argument? For there is not a single department of your affairs in which this has not happened to you. Many decrees have you at various times been entrapped into passing. You have been persuaded ere now to choose the worse allies instead of the better. In short, amid the variety of your measures, there must, I conceive, happen something of this kind occasionally. Shall we therefore make a law, prohibiting the council and the people hereafter from passing bills and decrees? I scarcely think so. We ought not to be deprived of a right, in the exercise of which we have been deceived: rather should we be instructed how to avoid such error, and pass a law, not taking away our power, but giving the means of punishing those who deceive us.

Dismissing this point however, if you consider simply, which is the more advantageous;—that you should be competent to bestow the honour, but should sometimes be led into error and bestow it upon worthless parties; or that, by reason of the prohibition, you should be unable to reward even one you know to be deserving;—you will find the former is more to your advantage. Why? Because, by honouring too great a number, you incite many to serve you; but by giving nothing, even to the deserving, you will deter all from the ambition. And for this reason besides:—they who have honoured unworthy parties may get the character of simplicity; but they who do not justly requite their benefactors have the reputation of meanness. In the same degree then as it is better to be esteemed simple-minded than base, it is more honourable to repeal the law than to enact it.

Neither does it seem rational, O Athenians, when I come to think of it, that, because he objects to some men having the privileges which have been granted them, he should deprive really deserving men of their honours. For if, as Leptines

argues, there are worthless and good-for-nothing people notwithstanding these grants, what must we expect, when good men will have no manner of advantage?

And further you should bear in mind, that by the present laws, which have long been in force, and the propriety of which even my adversary will not dispute, each man takes the public offices every other year, so that he is exempt for half of his time.[1] Then, when a moiety of this exemption is enjoyed by all, even by those who have never rendered you a mite of service, should we take away from our benefactors the additional fraction that we have bestowed upon them? Never! It were neither honourable in itself, nor to you becoming. How can it be otherwise than disgraceful, O Athenians, that when a law has been passed commanding truth to be spoken in the market-place, in matters where the public is not hurt if a man tells a falsehood, the commonwealth, which has herself imposed this command upon private citizens, does not observe the law in affairs of state, but has defrauded her benefactors, even though she will suffer for it greatly. For you have to consider, not merely whether you lose money, but whether you lose also a good name, which you are more anxious after than money; and not you only, but your ancestors, as I can prove: for, when they had got wealth in abundance, they expended it all in the pursuit of honour: for glory's sake they never shrank from any danger, but persevered unto the last, spending even their private fortunes.[2] Instead of a good name, this statute fastens an opprobrious one upon the commonwealth, unworthy both of your ancestors and yourselves. It begets three of the greatest reproaches—the reputation of being envious, faithless, ungrateful.

That it is altogether foreign to your character, men of Athens, to establish a law like this, I will endeavour to prove in a few words by recounting one of the former acts of our state. The Thirty[3] are said to have borrowed money from

[1] See Appendix II.

[2] He refers to the exertions of the Athenians in the last years of the Peloponnesian war.

[3] Lysander persuaded the Lacedæmonians to lend a hundred talents to support the Tyrants in Athens, B.C. 403. Thrasybulus with a band of exiles had seized the Piræus, and was joined by all the popular party. They defeated their opponents at Munychia, and killed Critias. A

the Lacedæmonians to attack those in Piræus. When unanimity was restored, and those troubles were composed,[1] the Lacedæmonians sent ambassadors and demanded payment of their money. Upon this there arose a debate; and some contended that the borrowers, the city party, should pay; others advised, that it should be the first proof of harmony to join in discharging the debt: the people, they say, determined themselves to contribute and share in the expense, to avoid breaking any article of their convention. Then were it not shameful, O Athenians, if at that time you chose to contribute money for the benefit of persons who had injured you rather than break your word, yet now, when it is in your power without cost to do justice to benefactors by repealing the law, you should prefer to break your word? I for my part would not advise it.[2]

The character of the republic therefore, O Athenians, one may see both by the example which I have cited, and by

new government of Ten was then established, in place of the Thirty. Lysander came to their assistance; but Pausanias, the Spartan king, who was opposed to the designs of Lysander, effected a reconciliation between the two Athenian parties, and, withdrawing the Peloponnesian troops, allowed the democracy to be reestablished. A general act of amnesty, which was faithfully observed, secured the state against further civil broils. The repayment of the Spartan loan was a wise measure on the part of the Athenians, and is justly praised by the orators. Isocrates, in his Areopagitic Oration (p. 153), thus speaks of it:—

"The victorious party who returned with arms in their hands (those in Piræus, I mean,) having destroyed the principal authors of the public calamities, dealt so fairly and constitutionally with the rest, that the party who had driven them into exile fared no worse than they who returned. But the most noble and signal proof of the moderation of the people was this:—The party that abode in the city had borrowed a hundred talents from the Lacedæmonians, to besiege those who occupied Piræus. An assembly was held to consider the question of repayment; and many urged that the borrowers, and not the besieged party, should discharge the debt of the Lacedæmonians; but the people determined to pay it by general contribution."

The orators, in speaking of these transactions, call the Tyrants and their party, *οἱ Τριάκοντα, οἱ ἐν ἄστει, οἱ ἐξ ἄστεος*, and the like; while they describe the popular party by the terms, *οἱ ἐν Πειραιεῖ, οἱ ἐκ Πειραιῶς, οἱ κατελθόντες*, &c.

[1] *Τὰ πράγματα ἐκεῖνα κατέστη.* Reiske: "ad quietem et pristinum statum redierunt." Auger: "tout eut été rétabli." Pabst: *die Verfassung des Staats wieder geordnet worden war.*

[2] Schaefer: "indignum censeo." Pabst: *ich mag nicht dieser Meinung seyn.*

many others, to be what I say, truthful and upright, looking not to pecuniary profit, but to what is honourable in action. Of the character of him who framed the law I know nothing in other respects; I say nothing against it, I am not aware of anything; yet judging by the law, I find it to be far different from yours. I say therefore, it would be more creditable for him to follow you in repealing the law, than for you to follow him in enacting it; and more advantageous to you both, if the state should have persuaded Leptines to appear like her, than if she were persuaded by Leptines to be like him. For be he ever so honest, as I am quite willing to admit, he is not better in character than the state.

I think, men of the jury, it will assist your deliberations upon the present question, when you learn also, that the peculiar feature, which makes the gifts of popular governments superior to the gifts bestowed by others, is in danger of being destroyed by the law. In regard to the profit of those who receive their bounty, despots and oligarchs can reward the most highly; for they make whom they please immediately rich: but in regard to the honour and the security, you will find the gifts of popular governments are preferable. For that, instead of receiving the disgraceful meed of flattery, you are in a free state rewarded for merit, is a circumstance of glory: and it seems better to get the willing admiration of your equals, than to receive anything from a master. In despotic governments fear of the future is paramount to present obligation; but with you, whatever a man receives, he may hold safely—might at least in former times. This law therefore, which deprives gifts of their security, takes away the only advantage by which your gifts are distinguished: and, take from any government whatsoever the rule, that persons well-affected to the establishment shall be recompensed,—you will have taken away no slight protection of the government.

Possibly however, to withdraw your attention from these points, Leptines will venture to say, that now the official burdens fall upon poor men, but by the present law the most wealthy will bear them. Specious enough to the ear so far: examine it closely however, and it will appear to be false. We have, as you know, services to be performed by the resident aliens and by the citizens, from each of which certain privileged persons have the exemption of which Leptines

deprives them. From contributions for war and the public safety, and from the service of the trierarchy, justly and properly by our ancient laws no man is exempt, not even those whom Leptines proposed, the descendants of Harmodius and Aristogiton. Let us see then what additional parties[1] he finds for us to perform those services, and how many he will let off, if we are against him. Our wealthiest men, constantly serving the trierarchy, stand exempted from the ordinary burdens, while those who possess an insufficient income, having an exemption by necessity, are out of the reach of this liability:[2] from neither of these classes therefore shall we gain a contributor through the law. Oh, but he introduces many new parties to perform the services of the resident aliens. Well: if he can show five, I admit myself to be talking nonsense. However I will assume this not to be so, but that, if the law be established, the resident aliens charged from time to time will be more than that number, and that no citizen will stand exempt by reason of the trierarchy. Let us see then what it will be to the commonwealth, if all these persons perform the ordinary official services. It will be found, I say, to be far from an equivalent for the disgrace that must ensue. Look at it in this way. Of the aliens there are exempt, let me suppose, ten: and decidedly, as I said just now, I don't believe there are five. Of the citizens, I am sure, there are scarcely five or six. Of both then sixteen. Let us make them twenty, or if you like, thirty. Now let me ask, what is the number of persons who perform the regular services every year, choir-masters, gymnasiarchs, and feasters of the tribes? Perhaps sixty or a few more altogether. Then, in order that thirty or more persons may bear the charges during the whole time,[3] should we cause all to regard us with mistrust? Surely we know this, that, as long as the republic subsists, there will be plenty performing official services, and

[1] Χορηγοὺς (as F. A. Wolf observes) is here used in the wider sense, meaning not only the *Choragi*, but those who contributed to the other ordinary services. Pabst: *Spendengeber*.

[2] So Pabst: *und sind von dem zwang dieser Besteurung ausgeschlossen.* F. A. Wolf otherwise: "in hunc censum referri non possunt: non pertinent ad eum hominum ordinem, qui numera publica obire potest."

[3] That is, during the time that it takes to go through all the persons liable to the charge. Thus, if the number of persons at Athens liable to

no failure of serviceable men, but none will be willing to confer a benefit upon us, when they see former benefactors wronged. Well: but if there were ever such a deficiency of parties able to serve, which, in the name of Heaven, would be the better course—to bring the ordinary services into partnership, like the naval, or to deprive your benefactors of their gifts? I should think the former. As it is, he gives them a respite just for the time that each of these persons bears a charge:[1] afterwards each of them will spend as much as before. In the other case, each paying a small contribution according to his means, no man would suffer any hardship, however little he possessed.

There are persons however with so little of reason in them, O Athenians, that, although they venture not to contest these arguments, they make assertions of another kind—that it is monstrous, when the state has no funds of her own, that individuals should become rich by having got hold of an immunity. It is not just to couple these things together.[2] If a man has wealth without injuring you, surely one need not

be charged were 600, and the persons annually charged 60, the law of Leptines, providing 30 more contributors, would give an average annual addition of 3.

F. A. Wolf, in his Prolegomena, expresses a doubt whether Demosthenes has not understated the number of persons enjoying the exemption: "Dubites, an hæc computatio à Demosthene bonâ fide facta sit, maximè de civibus. Nam si ipsam orationem sequamur in iis, quæ de immunibus civibus habet, horum major numerus colligetur. At esset mirum tamen in tali re fallere velle populum." It has been suggested that when Demosthenes says, there are hardly five or six citizens exempt, he means not those who have the grant of exemption by law, but those who enjoy their exemption entirely by virtue of the grant, excluding (according to his previous calculation) those rich enough to be trierarchs, or too poor to be charged with any service. Such a meaning however cannot fairly be got from the words ἀτελεῖς εἰσι.

[1] Leptines eases the general body of men liable to serve for such time only as the new parties whom he introduces have the charge laid upon them. Thus—to take the number assumed in the last note—while the three additional parties, whom Leptines provides for the current year, are called upon to serve, some three persons out of the sixty chargeable will be relieved for the time; but their turn will soon come round again.

[2] These two things, the poverty of the state and the immunity of certain individuals, have no proper connexion, and are only mentioned together to raise a prejudice. Auger and Pabst have missed the point of the sentence. Auger; "ils ont tort dans ces deux points." Pabst; *mit Unrecht behaupten sie Beide.*

grudge it to him. If they can say he has obtained it fraudulently or in any improper way, there are laws by which they may punish him; but when they decline to take such course, they should forbear also to use this language. With reference to the state having no funds, you must consider, that you will be no better off by taking away the immunities: for these expenses have no connexion with the public revenues and treasures. And besides—there being now two advantages for the state,[1] wealth and general confidence; the confidence that we actually enjoy is the more valuable. Yet if any one thinks, that, because we have no money, we ought likewise to have no good name, he reasons badly. My prayer to the gods is, that, if possible, we may have wealth also in abundance, but that at all events we may maintain our character of being trustworthy and truthful.

But come, I will prove that the affluence, which my opponents will tell you some men will derive from their relief, is to your advantage. You are of course aware, that no man is exempt from the navy-charge or the war-taxes. Well then: this man of wealth, whoever he is, will contribute largely to these expenses: no doubt of it. And all will agree, that our means of providing for these services ought to be the most ample: for by the expenditure in choral exhibitions pleasure is given to the spectators only for a brief portion of a day; but by unstinted supplies for the service of war safety accrues to the commonwealth for ever. So that as much as you relinquish here, you gain there; and you give by way of honour what, even if not given, may be had by those whose estate is equal to the trierarchy. That no man is exempt from the navy-charges, I believe you are all aware: however he shall read you the law itself. Take the navy law and read just that part:

THE LAW.

"And none shall be exempt from the trierarchal service except the nine archons."

[1] That is, two advantages which the state may possess, or may seek to possess. Auger translates it with much clearness: "Ajoutez que des deux avantages dont peut jouir notre ville, les richesses et la confiance des peuples, la confiance qu'on a maintenant en elle est le plus précieux." Pabst: *Ausserdem ist, wenn unser Staat zwischen den beiden Gütern, Vertrauen und Credit auf der einen Seite und Geldbesitz auf der andern Seite die Wahl hat, Vertrauen und Credit für ihn bei weitem mehr werth.*

You see, men of Athens, how clearly the law has expressed, that none but the nine archons shall be exempt from the trierarchal service. Well then: they whose property is below the amount qualifying for the trierarchy pay a war-contribution in the property tax: they who come up to the trierarchy will be serviceable to us for both purposes, the trierarchy and the property-tax. What ease then, Leptines, does your law give to the people, if it creates one choir-master [1] for one or two tribes, who, after once performing this service instead of some other party, will be free? I cannot see. It fills the whole city however with shame and mistrust. When therefore the damage that it will do is far greater than the benefit which it brings, ought it not to be repealed in this court? I should say so.

Again, men of the jury: as there is an express clause in his statute, that no one, whether citizen, denizen,[2] or alien, shall be exempt, but it does not say exempt from what, whether from the office of choir-master or what other charge, but simply that no one shall be exempt but the descendants of Harmodius and Aristogiton; and as under the term "no one" it comprehends all other persons in the world, and the term "alien" it does not confine to those dwelling at Athens; it deprives even Leucon, ruler of the Bosporus,[3] and his

[1] Perhaps, as Schaefer thinks, χορηγὸν may here again be used in the wider sense. The commentators torture their brains to make this square with the previous calculations of Demosthenes. There is no necessity for taking such pains. The orator speaks loosely in this passage, but with sufficient precision for his purpose.

[2] Ἰσοτελῶν. (See Appendix III.) Leptines only meant by his law, that no one should be exempt from the ordinary services of Choregus, Gymnasiarch, &c., which were performed by citizens and other residents in Athens. The term ἀτελής however, unrestricted by qualifying words, might extend to the customs and other imposts payable by foreigners trading with the Athenians; and therefore Demosthenes argues that Leucon, king of the Bosporus, would by the new law be deprived of his exemption from duties. Not having the whole of the statute before us, but only those parts of it which are quoted by Demosthenes, we are unable to judge whether his construction of this particular clause be the true one. There may have been words of recital in the introductory part of the statute, which showed the true application of the term ἀτελής, according to the well-known maxim both of law and common sense, that the meaning of a doubtful expression may be gathered from the context.

[3] The Tauric Chersonese, now the Crimea, was, as may be learned even from this passage, one of the principal granaries of Athens. The

children of the gift that you bestowed upon them. For Leucon, as you know, is by birth an alien, though by your adoption a citizen: in neither respect however can he have immunity according to this law. Now, whilst our other benefactors have each made themselves useful to us for a particular period, Leucon, you will find, never ceases to confer benefits upon us, and such benefits as our country stands most in need of. You are of course aware, that we consume more foreign corn than any people in the world. But the corn which comes in from the Euxine equals the whole quantity that comes from other markets; and no wonder: not only because that district has an abundance of corn, but because

first of the Greeks who carried their commerce to these parts were the Milesians, who at an early period established divers colonies on both sides of the Euxine sea, and penetrated as far as the Cimmerian Bosporus, where they founded on the coast the cities of Panticapæum (or Bosporus) and Phanagoria. The commerce of the Euxine enriched Miletus, and preserved her influence over her colonies; until at last she fell under the Persian yoke, and this connexion was broken. When Athens became a naval power, the whole coast from the Hellespont to the Palus Mæotis was visited by her merchants, who succeeded to the trade of the Milesians. From the Tauric Chersonese they exported not only corn, but salt-fish, honey, wax, wool, hides, fleeces, timber, and slaves, (most of which articles are exported from the Crimea to this day;) and they imported in return the wines of Mende, Thasos, Cos, and other Ægæan islands; and all kinds of manufactures from Athens, such as armour, cloth, leather, hardware, earthenware, sculpture, jewellery, &c. For some time the Athenians possessed a fort or factory on the Tauric coast, called Nymphæum, which, towards the close of the Peloponnesian war, was given up to the sovereign of the country by Gylon, the maternal grandfather of Demosthenes. For, soon after the Milesian fleets had disappeared from the Euxine, the Tauric peninsula fell under the dominion of a king, the founder of a most flourishing dynasty, called the Archæanactidæ, which was transmitted through a long line of succession to the time of Mithridates, by whom the kingdom was annexed to his own. Satyrus, the father of Leucon, was killed at the siege of Theodosia, B.C. 393. He is mentioned by Isocrates as a friend of Athens. Leucon succeeded him, and reigned forty years. He took Theodosia (the modern Caffa), which was an important emporium for trade, lying more southward than Panticapæum, and having a more convenient harbour. He continued to favour the Athenians, as his father had done; and they honoured him not only with exemption from all duties, but with an inscription upon a pillar, recording his liberal conduct. The wisdom and good fortune of this prince, both in war and peace, are attested by divers ancient writers, referred to in the notes of F. A. Wolf.

Leucon, who reigns there, has granted exemption from duty to those who export to Athens, and issues an order, that merchants bound for our port shall load their vessels first. Having the exemption for himself and his children, he has given it to all of you. Observe what an important thing it is. He takes a thirtieth from all who export corn from his dominions. Now the measures[1] of corn that come from his country are about four hundred thousand; as one may see from the entry kept by the corn-inspectors. Therefore, for the three hundred thousand measures he gives us ten thousand, and for the hundred thousand about three thousand. And so far is he from depriving our commonwealth of this boon, that when he made a new harbour at Theodosia, which the mariners say is not at all inferior to Bosporus, he gave us the exemption there also. Many other instances which I could mention, of benefits conferred upon you by this prince and his ancestors, I pass by: but the year before last, when there was a scarcity among all men, he sent you not only a plentiful supply of corn, but at such a price, that there was a surplus of fifteen talents in the hands of Callisthenes. What then, O Athenians, do you expect of this man who has been such a friend to you, if he should hear that you have by law deprived him of his exemption, and disabled yourselves from granting it if you should change your minds hereafter? Are you ignorant that this same law, should it be confirmed, will deprive of exemption both him and all Athenians who carry corn from his kingdom? Surely no one imagines, that he will submit to have your gifts to him revoked, while his to you remain. Thus, in addition to many injuries which are likely to result to you from the law, it deprives you of some advantages immediately. And are you still considering whether you should abolish it, or have you not decided long ago?

Take and read them the decrees concerning Leucon.

[*Decrees.*]

That Leucon has obtained his exemption from you on good and reasonable grounds, you have heard from the decrees,

[1] The *medimnus* (the measure here spoken of) was about a bushel and a half. The gain to the Athenians by the exemption from duty, which Demosthenes puts in round numbers, was exactly 13,333⅓ medimni.

men of the jury. Pillars on which all this is copied have been set up by you and him, one in Bosporus, one in Piræus, another at Hieron.[1] Only consider to what extreme disgrace you are brought by this statute, which makes the people appear less trustworthy than a single man. Be assured that these pillars stand for contracts to bind your mutual promises. Leucon, as it will appear, abides by them, and is always desirous to do you service: you have invalidated them while they are yet standing, which is far more shameful than pulling them down; for now they will stand as evidence for persons who choose to malign the commonwealth in verification of their charges.

But come, suppose Leucon sends to us and asks, for what ground of complaint or objection you have deprived him of his immunity, what, in the name of Heaven, shall we say? what shall be stated by the person who prepares the decree for us? Peradventure, that some of the privileged parties were unworthy. Suppose then he should reply—"Well: some of the Athenians, I guess, are bad men, and I have not therefore deprived the good; but, considering the people good, I allow all to have the exemption." Will not his language be fairer than ours? I certainly think so. It is more usual with all men, to be kind for the sake of their benefactors even to some worthless individuals, than on account of the worthless to take back their gifts from persons confessedly meritorious. I really am unable to see, how people are to be prevented from tendering the exchange[2] to Leucon if they please. For he always has effects at Athens, and according to this law, if any one comes upon them, he

[1] A place on the coast of the Euxine, between the Thracian Bosporus and Trapezus. Here was a temple of Jupiter (Ζεὺς Οὔριος) said to have been built by the Argonauts.

[2] Demosthenes here suggests that Leucon, as an Athenian citizen by adoption, would be liable to serve the offices of trierarch, choregus, &c.; which liability would attach upon him in respect of the property which he continually had in Athens or Piræus; for example, merchant-vessels and their cargoes. Any citizen called upon to serve one of these offices, who thought Leucon's visible estate greater than his own, might (as Demosthenes contends) offer him the exchange: as to which see Vol. I. Appendices III. and IV. In that event Leucon's property would be liable to be seized under legal process. Whether such a case fell within the scope of the law, seems doubtful; and that there was a doubt, may be gathered from the words of Demosthenes himself.

will either be deprived, or compelled to serve a public office. However, it is not the pecuniary cost that will be his chief grievance, but the feeling that you have taken your gift away from him.

But you have not only to see, men of Athens, that Leucon be not wronged, whose anxiety about his privilege would be for the sake of honour and not emolument, but that no one else be wronged, who has befriended you in the day of his prosperity, and to whom the grant of exemption which you then made him has come to be an advantage. Who answers this description? Epicerdes of Cyrene,[1] who, if any man that ever received this honour was deserving of it, was justly held to be so, not because his donations were large or striking in amount, but because they were given upon an occasion, when even among those who had received obligations from you it was difficult to find any willing to remember them. For Epicerdes, as this decree passed in his favour shows, gave a hundred minas to your countrymen who were captured in Sicily, when that terrible disaster had befallen them, and was the principal means of their not all dying of hunger. Afterwards, when you had granted him immunity on this account, seeing in the war [2] just before the time of the Thirty that the people were in need of money, he gave a talent of his own accord and unasked. By Jupiter and the Gods! consider, O Athenians, how could a man more signally display his good-will to you, or less deserve to be wronged, than he—when in the first place he was present at the misfortune of Athens, and yet chose the side of the unfortunate and the chance of their future gratitude in preference to the party who were at that time victorious, and among whom he was dwelling: and seeing another occasion of distress, he was

[1] It is most probable that Epicerdes himself was not alive at the time of this oration, which was fifty-eight years after the defeat at Syracuse, where he is said first to have befriended the Athenians. Demosthenes, when he says that Epicerdes will be a loser by the law, alludes in fact to his children, whom he specifically mentions at page 471. and who (as the Scholiast informs us) had migrated from Cyrene to Athens. It is, as F. A. Wolf truly observes, a part of the rhetorical artifice of Demosthenes, to identify the father with his children, where the immunity had been extended to them; and to make it appear that the revocation would be an injury to the dead.

[2] In the last years of the Peloponnesian war.

bountiful again, taking no thought to save what he had for himself, but only that your wants should be supplied as far as depended upon him? From this man, who has thus actually shared his property with our state, while the immunity which he enjoys is nominal and honorary, you will take away, not immunity, (for while it existed he never availed himself of it,) but confidence in you: and what can be more disgraceful? He shall read you the very words of the decree passed in honour of Epicerdes. And observe, men of Athens, how many decrees[1] the law sets aside, and how many persons it wrongs, and on what occasions they rendered you service. You will find it wrongs the very last persons you ever should have wronged. Read:

[*The Decree.*]

The kindnesses, in return for which Epicerdes obtained his immunity, you have heard from the decrees, men of the jury. I would have you consider, not that he gave a hundred minas and again a talent, (for even they who received it, I imagine, were not struck by the magnitude of the sum,) but his zeal and his volunteering the service, and the occasions on which he rendered it. Doubtless all people deserve requital who are the first to do acts of kindness, but especially those who do them in times of need; and one of those is Epicerdes clearly. And are we not ashamed, O Athenians, that we should have forgotten all this, and from the children of such a man taken away their privilege without any cause of complaint? Though the people who were then saved by him and granted the immunity are different from you who now take it away, that does not acquit you of the shame: nay, that itself is the worst part of it. For when the witnesses and objects of his bounty thought it merited such a grant, should we, who hear it by report only, revoke the grant as unworthily bestowed,[2] how can our conduct be otherwise than atrocious? I have the same argument also for those who put down the Four

[1] Demosthenes has hitherto mentioned only the decrees in favour of Leucon and Epicerdes; but Phormio had brought others before the notice of the jury, (as we learn from page 472,) and Demosthenes himself was about to cite further examples, (472—476.) By the words, ὅσα ψηφίσματα ἄκυρα, &c., he alludes to all these cases.

[2] Literally: "For if the obliged parties who knew all about it thought they had received an obligation deserving of that recompense, and

hundred,[1] and for those who helped us when the popular party were in exile.[2] I consider they would all be used most shamefully, if any of the decrees then passed in their favour should be rescinded.

If any one of you however believes that the country is far from requiring any such assistance now, let him pray to the Gods that it may be so, and I join in the prayer: but let him consider, first, that he is about to give his vote upon a law which if not repealed we shall have to act upon; secondly, that bad laws injure even states which imagine themselves securely established. Revolutions would never have happened for better and for worse, but that people who stood in danger were set up again by good measures and laws, by honest men, and by careful attention to all things, while those who appeared to be in full prosperity were gradually undermined by the total neglect of all. Mankind in general acquire their good fortune by prudent counsel and by thinking nothing beneath them; yet they are unwilling to preserve it by the same means. Fall not you into this error now: do not determine for a law, which, while the commonwealth is flourishing, will fill it with evil repute, and, if anything should happen hereafter, will bereave it of people disposed to serve you.

Nor is it only men who chose to befriend you privately, and who made themselves useful on those important occasions which Phormio has lately recounted and I have just spoken of, that you should be cautious, O Athenians, not to wrong; but many others besides, who caused whole cities, of which they were natives, to become our allies in the war with Lacedæmon, aiding your commonwealth both by word and deed: some of whom, on account of their friendship for you, are deprived of their country. The first whom it occurs to me to mention are the Corinthian exiles. I am obliged to speak

yet we who hear it by report only take away the recompense on a plea that the obligation did not deserve it," &c. Ἀναξίων is neuter, referring to ἄξια τούτων.

[1] The oligarchy of four hundred, established by the intrigues of Pisander, Phrynichus, and Antiphon, B.C. 411, and deposed four months afterwards. See Thucydides, viii. 63, &c.

[2] In the time of the Thirty Tyrants. See ante, p. 7. We know from Lysias, that many resident aliens who then assisted the people were rewarded with the franchise.

to you of things which I have myself heard from the eldest of you. Other instances in which they did us service I will pass by: but when the great battle at Corinth[1] took place against the Lacedæmonians, and when the people in the city designed after the battle not to receive the troops within their walls, but to treat with the Lacedæmonians for peace, those men, seeing our commonwealth in misfortune and the Lacedæmonians masters of the pass, did not abandon us or take selfish counsel for their own safety, but, though all the Peloponnesians were in arms close by, opened the gates to us in spite of the multitude, and chose rather to share with your army whatever calamity was in store for them, than to obtain a certain deliverance without you; and they admitted the troops, and preserved both you and your allies. Afterwards, when the peace of Antalcidas was concluded with the Lacedæmonians,[2] they, as a punishment for this conduct, were driven by the Lacedæmonians into exile: you gave them shelter, and performed the part of honourable men; for you voted them all that they required. And are we now considering whether such grants should be valid? Why even the mention of it is disgraceful to the parties who consider;[3]

[1] This battle, in which the Athenians, Thebans, Corinthians, Argives, and others, were defeated by the Lacedæmonians and their allies, B. C. 394, is described by Xenophon in the Hellenics, iv. c. 2, s. 16—23. According to his statement, the Corinthians refused to admit the fugitives into the city; and they were obliged to return to their camp.

[2] At the peace of Antalcidas, B. C. 387, Agesilaus insisted that the Argive garrison, which had been stationed in Corinth during the war, should be withdrawn. It was so: and thereupon a reaction of parties took place at Corinth. The democratical leaders went into exile, not, according to Xenophon, for the special reason assigned by Demosthenes, but for fear of being punished for the massacres which they had committed six years before. The aristocratical exiles returned, and Corinth again became the ally of Lacedæmon. (Xenophon, Hellen. v. c. 1, s. 34—36.)

'Επὶ 'Ανταλκίδου is rightly interpreted to mean *auctore Antalcidâ.* Compare p. 495, where ἐπ' ἀνθρώπου is used in the same way.

[3] I agree with F. A. Wolf's interpretation of τοῖς σκοπουμένοις, and not with Schaefer's, who renders it—" si qui rem perpendant :" though undoubtedly the words are capable of that construction. It would be exceedingly harsh to introduce σκοπουμένοις in relation to other parties between σκοποῦμεν, σκοποῦσιν, and ἐσκέφθαι, all having reference to the Athenians; and I conceive that the same word is purposely repeated

should it be heard that the Athenians are considering, whether their benefactors should be allowed to retain their gifts. Such a point should have been considered and determined long ago. Please to read them this decree :

[*The Decree.*]

This, men of the jury, is the decree which you passed in favour of the Corinthians exiled on your account. Bethink you: should any person acquainted with those events, either from having taken a part in them or by report from an eye-witness, hear afterwards of this statute annulling the rewards then bestowed; how base in his judgment would the legislators appear! we who at the period of our distress were so liberal, so ready to do anything, but, after obtaining all that we could desire, are so mean and ungrateful as to have deprived the holders of our gifts, and to have passed a law prohibiting us from making any such gifts in future! Oh, but some of the persons who obtained them were undeserving. That will run through their whole argument. Then we shall admit our ignorance of this principle, that the desert should be weighed at the time of giving, not an immense time afterwards. To abstain from giving at all is the part of prudent men; to take away what has been given is the part of envious men: and you must not be thought to have such a feeling. But on the point of merit itself I shall not hesitate to declare to you my opinion. A state, I conceive, is not to judge whether a man is deserving on the same principles as an individual: for the subjects of inquiry are not the same.[1] In private each of us considers who is fit to be connected with him in marriage or the like; and such questions are determined by certain laws and opinions: but a state and a people look for

by Demosthenes, to make his hearers thoroughly ashamed of the error into which Leptines had led them. Pabst : *Doch das Wort an sich klingt schon schimpflich für Die welche hier noch sich bedenken.*

[1] Junius adopts a similar line of argument, when he contends that Wilkes was entitled to the gratitude of the people for his public services, notwithstanding that his private character might not be irreproachable. In one of his letters to Horne Tooke he says—" You will not suspect me of setting up Wilkes for a perfect character. The question to the public is; where shall we find a man, who, with purer principles, will go the lengths and run the hazards that he has done? The season calls for such a man, and he ought to be supported."

a person that helps and preserves them, and that is to be discovered not by birth or opinion, but by action. Then, when we need a service, shall we allow any one that likes to render it; and, after we have received it, shall we inquire into the merit of him that served us? It will not be a righteous policy.

But perhaps these are the only men who will be so treated, and all my argument concerns them alone. Nothing of the kind. I would not attempt to call over the whole list of your benefactors, who through the law, if it be not repealed, will be deprived of their gifts. I will produce one or two more decrees, and then pass from that topic. First then—Is it not clear that, if you take away the immunity, you will wrong the Thasians[1] of the party of Ecphantus, who by delivering Thasos to you, and forcibly expelling the Lacedæmonian garrison, introducing Thrasybulus, and making their country your friend, caused the district about Thrace to become allied to you? Again—will you not wrong Archebius and Heraclides, who by delivering Byzantium[2] to Thrasybulus made you masters of the Hellespont, so that you let the tithe, and getting ample funds, compelled the Lacedæmonians to make peace on such terms as you desired? When they were expelled afterwards from their country, men of Athens, you voted what I conceive was proper for benefactors in exile on your account, the title of state-friends and benefactors,[3] and

[1] The events here referred to belong to the year B.C. 407, when Thrasybulus reconquered Thasos, which had revolted from the Athenians. At the same time he recovered other places on the coast of Thrace. See Xenophon, Hellen. i. c. 4, s. 9.

[2] Thrasybulus, commanding the Athenian fleet, B.C. 389, sailed to Byzantium, and, establishing a democratical government, brought it back to the Athenian alliance. At the same time he gained for his country the duty of a tenth, which the Byzantines used to charge on ships coming from the Euxine. (See Xenophon, Hellen. iv. c. 8, s. 27.) The peace referred to by Demosthenes is that of Antalcidas, which, though its advantages are here overstated by the orator, was so far favourable that it left Athens independent, with her long walls restored, and with Lemnos, Imbrus, and Scyrus restored to her dominion. Compare the exaggerated terms in which he describes the peace granted by the Spartans to Olynthus. (De Fals. Leg. 425.)

[3] The title of Benefactor was occasionally conferred by states and princes for some signal service; and it was regarded as a very high honour. Thus Xerxes writes to Pausanias (Thucydides, i. 129): Κεῖταί σοι εὐεργεσία ἐν τῷ ἡμετέρῳ οἴκῳ ἐσαεὶ ἀνάγραπτος· which the Scholiast

exemption from all imposts. Then should we suffer men exiled on your account, who justly received your bounty, to be deprived of what you gave them without any cause of complaint? It would be disgraceful; as you will clearly see, if you will put the following case to yourselves: Suppose some of the people who now hold Pydna or Potidæa, or any of the other places which are subject to Philip and hostile to you, (just as Thasos and Byzantium then were friendly to the Lacedæmonians and estranged from you,) should offer to deliver them up, if you would give them the same rewards which you gave to Ecphantus of Thasos and Archebius of Byzantium, and some of these men opposed them, urging that it was monstrous for any of the resident aliens to escape the public burdens, while the rest did not: what would be your feelings towards the men who urged such an argument? Need I ask? Would you not treat them as malignants[1] and refuse to hear them? It is disgraceful then, if, in the expectation of benefit, you would regard a person so arguing as a malignant, yet, on a question of taking away the rewards of previous benefactors, you will listen to men so arguing. But further—let us consider—by what were the persons who betrayed Pydna and the other places to Philip induced to wrong us? Every one must see, by the rewards which they expected to get from him for the service. Which then, Leptines, should you rather do—persuade our enemies, if you can, not to reward persons who become their benefactors in wronging us, or introduce a statute here, which takes away a portion of the rewards enjoyed by our benefactors? I should think the former. But, that I may not stray from the present

interprets to mean, διὰ παντὸς εὐεργέτης κληθήσῃ. And Herodotus says that benefactors thus registered by the Persian kings were called "Orosangæ." (See Herod. v. 11; viii. 85.) The Syracusans, who in the Peloponnesian war assisted the Antandrians to fortify their city, were rewarded with citizenship and the title of Benefactors: Διὰ ταῦτα εὐεργεσία τε καὶ πολιτεία Συρακουσίοις ἐν Ἀντάνδρῳ ἐστί. (Xenophon, Hellen. i. c. 1, s. 26.) Hence the surname of Euergetes, given to so many of the kings of Egypt and Syria. Compare Demosthenes, De Fals. Leg. 400, 446. Contr. Aristocr. 668.

[1] Συκοφαντούντων: "persons taking a vexatious and mischievous course." (See Vol. II. p. 74, note 2.) Auger: "assurément vous leur fermeriez la bouche comme à des envieux et à des gens mal intentionnés." Pabst: *hämische Rechtsverdreher*

point, take the decrees which were passed in favour of the Thasians and Byzantines. Read :

[*The Decrees.*]

You heard the decrees, men of the jury. Perhaps some of these men no longer live: but their deeds live after they have once been done. It becomes you therefore to let these pillars remain in force for ever, that, as long as any men exist, they may suffer no wrong from you, and, when they die, the pillars may be a monument of the character of Athens, and stand for examples to all who wish to befriend you,—that Athens has requited those who rendered her service.

And let it not escape you, O Athenians, that it would be one of the deepest disgraces, were all people to see and hear, that the calamities which these men have suffered on your account have been made to endure for ever, while the gifts which they received from you as a recompense have been thus early abolished. Much more befitting were it that you left the gifts to mitigate their misfortunes, than that during their continuance you took the gifts away. For, in Heaven's name, what man will be willing to serve you, if in case of failure he is to be punished instantly by your enemies, and in the event of success he cannot depend upon your gratitude?

I should be sorry indeed, men of the jury, did it appear I had but this ground of complaint against the law, that it deprives many foreign benefactors of the immunity, but was unable to show that any of our citizens who have obtained the honour were deserving of it. I would pray that all blessings may be most abundant among ourselves, and specially that the most and best of our benefactors may be our own citizens. First then look at Conon:[1] see whether you

[1] Conon first becomes known to us as one of the Athenian commanders in the last years of the Peloponnesian war. From Ægospotamos, where the defeat was owing to the culpable negligence of his colleagues, he escaped with eight ships to Cyprus, and found an asylum with his friend Evagoras, who had raised himself to the sovereignty of the island. Here Conon remained quiet, until Persia was threatened with war by the Lacedæmonians, when he obtained a naval command in the king's service. In the year B.C. 397 he liberated Rhodes from the Spartan dominion, and restored the democracy. When the war of

can find any fault either with the man or with his achievements, to justify you in revoking any of his honours. He, as you may learn from some of your own body who were his contemporaries, after the return of the popular party from the Piræus, when our commonwealth was weak and possessed not a single vessel,[1] he, I say, commanding for the king, without having received the least supply from you, beat the Lacedæmonians at sea, and accustomed a people lately commanding others to hearken unto you, and expelled their governors from the islands, and afterwards came home and rebuilt the walls, and was the first person who again put us in a condition to dispute with Lacedæmon for the leadership. He is indeed the only man in whose honour this has been inscribed upon the pillar—"Since Conon" (it says) "liberated the allies of Athens." This inscription, men of the jury, is glorious to him in your eyes,[2] to you in the opinion of all Greece: for whatever advantage any among us procures for others, the name of the commonwealth enjoys the reputation of it. Therefore the Athenians of that day not only granted immunity to him, but erected a brazen statue, as they did to Harmodius and Aristogiton, the first after theirs:[3]

395 B.C. broke out in Greece, he made a journey to the Persian court, and obtained a large supply of money from Artaxerxes, who appointed him and Pharnabazus joint admirals of the royal fleet. In the following year he gained the battle of Cnidus, in which the Lacedæmonian fleet, commanded by Pisander, was totally overthrown. After this he sailed with Pharnabazus round the Ægæan, and expelled the Spartan Harmostæ from most of the islands; he also took Cythera, and ravaged the enemy's coasts. But the most gratifying of all his exploits to the Athenians was that which followed. He carried his victorious fleet (with the permission of Pharnabazus) to Athens, and with the help of his seamen and a large supply of Persian gold he restored the long walls which connected Athens and Piræus. This work was completed about the year B.C. 390. (See Thirlwall's History of Greece, iv. pp. 409—411, 430—433.)

[1] By the terms of peace granted to Athens at the close of the Peloponnesian war, she was not allowed to possess more than twelve ships of war.

[2] *Πρὸς ὑμᾶς αὐτούς*: "apud vos ipsos," as Schaefer correctly interprets it. Auger renders it clearly: "Cette inscription lui fait honneur auprès de vous, et à vous auprès de tous les Grecs."

[3] The same honour was conferred upon Evagoras of Cyprus, who for his services was also made a citizen of Athens. Isocrates in the Oration inscribed to that prince (p. 200) says, it was under the advice of Conon and Evagoras that the Persian king resolved to attack the Lacedæ-

for they considered that he too had put down no slight tyranny, when he overthrew the empire of Lacedæmon.

That you may pay the more attention to what I say, he shall read you the very decrees that were then passed in favour of Conon. Read:

[*The Decrees.*]

Nor was it by you alone, men of Athens, that Conon was thus rewarded for the deeds which I have mentioned, but by many others, who justly deemed it right to repay the benefits which they had received. It would be shameful then, men of Athens, when the honours conferred elsewhere are secured to him, that from yours alone this portion should be taken away. Nor again would it be very creditable, to assign him in his lifetime all these honours which you have heard, because you esteemed him so highly, and yet after his death to forget it all, and take away a portion of what was given him. Many of his achievements are worthy of praise, O Athenians, and on all their accounts you are bound not to annul their rewards; but the noblest of them is the restoration of our walls. You may judge by comparing how Themistocles, the most renowned man of his day, accomplished the same feat. The story is,[1] that he desired his countrymen to begin building, and instructed them to detain any one that should come from Lacedæmon; he went off himself as ambassador to the Lacedæmonians, and at a conference with them, it being reported that the Athenians were building their wall, he denied it, and bade them send ambassadors to inquire, and, when they did not return, he advised them to send others. And doubtless you have all heard in what manner he is reported to have tricked the Lacedæmonians. I say then — and by heavens! men of Athens, let no one be angry at what he is about to hear, but consider if it be true:—as it is better to act openly than clandestinely, and more glorious to accomplish anything by victory than by deceit; to the same extent

monians at sea; and this advice was given for the benefit of the Greeks; for if the Lacedæmonians were beaten on land, the king would have had all the advantage of it, but if their naval power was destroyed, it would help to liberate the Greek cities from their dominion. The result proved the wisdom of their counsel. The Athenians placed their statues near to that of Jupiter the Deliverer.

[1] See Thucydides, i. 90—93.

did Conon raise the walls more honourably than Themistocles. The one effected it secretly, the other by vanquishing the people who would have prevented it. Such a man therefore ought not to be wronged by you, or to come off worse than the orators, who are to show cause why any of his gifts should be taken away.

Well, but let us allow the son of Chabrias to be deprived of the immunity, which his father justly received from you and bequeathed to him. Why, I scarcely think any man in his senses would say this was proper. You know probably without my telling you, that Chabrias was a noble man: yet there is nothing to prevent my briefly mentioning his performances. In what manner he took the field with you against all the Peloponnesians at Thebes,[1] and how he slew Gorgopas in Ægina,[2] and how many trophies he raised in Cyprus, and afterwards in Egypt,[3] and how, traversing as he did almost every place, he nowhere disgraced the name of the

[1] More strictly he should have said, "near Thebes." The event occurred during the campaign of Agesilaus in Bœotia, B.C. 378, and is thus described by Thirlwall (History of Greece, v. 45): "The Athenian and Theban troops were advantageously posted on the range of hills two miles south of the city; yet Agesilaus thought himself strong enough to attack them. He first sent his targeteers against them, and when these were repulsed, advanced to the charge with his phalanx. Chabrias ordered his men to keep their ground, pointing their spears against the enemy, and resting their shields upon one knee; Gorgidas followed his example. The attitude was new, and indicated a spirit which might make the victory doubtful; and Agesilaus thought it prudent to sound a retreat. The manœuvre acquired so much celebrity, that a statue was afterwards erected to Chabrias at Athens, in the attitude which he had devised; and it seems to have hastened the enemy's retreat from the Theban territory."

[2] Gorgopas commanded a Lacedæmonian squadron stationed at Ægina, from which he infested the coasts of Attica, and assisted the Æginetans in their piratical excursions. Chabrias landing in the island surprised and slew him in an ambuscade, and by this means freed the Athenian commerce for a time from plunder. This happened B.C. 388, one year before the peace of Antalcidas. (See Xenophon, Hellen. v. c. 1, s. 10—13.)

[3] Chabrias was sent to assist Evagoras against the forces of the Persian monarchy, B.C. 390. This was the Cyprian war, which lasted ten years, and ended by the submission of Evagoras. In the year B.C. 377 Chabrias went to Egypt, to command the Greek mercenaries of Acoris, but was recalled by the Athenians. In B.C. 362, he was engaged by Tachos, king of Egypt, to command his fleet. See the Chronclogical Abstract in Vol. I. (Diodorus, xiv. 98; xv. 29, 92.)

commonwealth or himself;—all these things it is not very easy to speak of as they deserve, and it would be a shame that in my description they should fall below the opinion which you each entertain of him. Those however which no language of mine could degrade I will endeavour to recal to your minds. He vanquished the Lacedæmonians at sea,[1] and captured forty-nine galleys: he took the greater number of these islands and delivered them up to you, and made them friendly, when before they were hostile; he carried to Athens three thousand prisoners, and brought in more than a hundred and ten talents, the spoil of the enemy. To all these facts some of the eldest among you can bear me witness. And besides, he captured above twenty galleys more, taking them one and two at a time; all of which he brought into your harbours. To sum up the whole: he is the only general who never lost[2] a single city or post or ship or soldier, when he commanded you: none of your enemies has any trophy over you and him, while you have many over many enemies under his command.

That I may not in my speech omit any of his actions, the clerk shall read you the catalogue of ships that he took, and where he took each, and the number of cities, and the quantity of treasure, and where each of the trophies was erected. Read:

[*The deeds of Chabrias.*]

Does it appear to any of you, O Athenians, that this man who took so many cities and overcame at sea so many galleys of the enemy, who brought so many glories and no dishonour to the state, deserves to be robbed of the immunity, which he obtained from you and bequeathed to his son? I cannot believe it. There would be this absurdity in it.—Had he lost one city or ten ships only, these men would have im-

[1] The sea-fight of Naxos, B.C. 376, in which the Peloponnesians were defeated with a loss of thirty ships, was the first which the Athenians had won with their own forces since the Peloponnesian war. It is related with brevity by Xenophon (Hellen. v. c. 4, s. 61); more fully by Diodorus (xv. 35).

[2] Meaning, "lost by his own negligence." Schaefer properly corrects F. A. Wolf for rendering it "amisit," instead of "perdidit." Our word "lost" will do for either. We might say, "no city was lost through him."

peached him for treason, and on conviction he would have been lost for ever: and yet when, instead of this, he took seventeen cities, captured seventy ships and three thousand prisoners, and returned to the treasury a hundred and ten talents, and raised such a number of trophies, his rewards after all are not to be secured to him! Chabrias, O Athenians, will be shown not only to have achieved everything for you in his lifetime, but to have lost his life in the same cause: so that on this account, as well as for his living actions, you should have kindly feelings towards his son. It were well also, O Athenians, not to let it appear that we have been less generous than Chians to our benefactors. For when they, against whom he came with arms in hand as an enemy, have not revoked any of their former honours, but regarded ancient benefits as outweighing recent offences, should it appear that you, for whom he perished in the attack upon them,[1] instead of honouring him still more on that account, have revoked some of the rewards given for his former services, how can you help incurring merited disgrace?

For another reason too will the boy have been hardly treated, if he should be robbed of his privilege: because, often as Chabrias led you to battle, no man's son ever became an orphan through him, while this boy has been reared in orphanage through his father's zeal in your cause. Chabrias was, in my view, a firm patriot indeed! for, though he was reputed to be and was the safest of all generals, he exercised his caution on your behalf, whenever he commanded, but would not use it on his own, when he was placed himself in the post of danger; and rather chose not to live than to tarnish the honours which he had received from you. Should we then deprive his son of that, for which he determined to die or to conquer? And what shall we say, O Athenians, when the trophies which he erected as your general stand visible to all men, yet a portion of the recompense is known to have been taken away? Bethink you, men of Athens, and consider what is the question here. It is not the law that is tried, whether it be a proper one or otherwise: you are on your probation, whether or no you are fit people to receive benefits in future.

[1] In the Social war. (Diodorus, xvi. 7.) See Vol. II. p. 314.

Now take the decree that was passed in favour of Chabrias. Look and see. It should be somewhere about there.[1]

I wish to say another word on the subject of Chabrias. You, men of Athens, in rewarding Iphicrates formerly, rewarded not only him, but Strabax and Polystratus[2] also for his sake; and again, when you gave Timotheus his recompense, you for his sake gave citizenship to Clearchus and some others. Chabrias however was rewarded by you in his own person alone. If now he had asked at the time of obtaining his reward, that, as you had been kind to certain persons for the sake of Iphicrates and Timotheus, you would for his sake likewise bestow a kindness on some of these persons who have obtained immunity, (these for whose alleged unworthiness my opponents now require you to deprive all alike,) would you not have granted him this favour? I believe you would. Then will you deprive him now of his immunity on account of persons to whom you would then have granted a boon on his account? It would be absurd. Nor indeed does it become you to appear so eager at the time of receiving obligations, as to recompense not only your benefactors but their friends also, and yet after a brief interval to take back even from the principals what you have given them.

[*The decree of honours to Chabrias.*]

The persons then whom you will wrong, unless you repeal

[1] The published orations of the ancients were made as nearly as possible to resemble what was spoken, or supposed to have been spoken. Demosthenes here represents the clerk or usher of the court to be looking about for the decree, while in the meantime he addresses himself to a new point. This has all the appearance of being natural. F. A. Wolf, who has a long note on this subject, refers to the speech on the Embassy, p. 407, where the orator goes on speaking for a minute or two while the witnesses are standing at the bar. And he compares a passage in the Verrine oration of Cicero (IV. 3), which we know was only written and never spoken: "Canephoræ ipsæ vocabantur: sed earum artificem, quem? quemnam? rectè admones; Polycletum esse dicebant." Here the orator affects to ask some one for the name of the artist, and to receive an answer, informing him that it was Polycletus. The effect is thus more dramatic.

[2] Polystratus commanded the mercenary force at Corinth, in conjunction with Iphicrates and Chabrias. See the First Philippic, p. 46. Nothing is known of Strabax.

Among the honours granted to Iphicrates by the Athenians, were a brazen statue and maintenance in the Prytaneum; as we learn from the oration against Aristocrates, p. 663.

the law, are, besides many others, these that you have heard, men of the jury. Do then reflect and consider in your minds. If any of these that are departed could in any way have a sense[1] of the present proceeding, how just would be their indignation! For if the services which they have rendered you in deeds are to be judged of by words, and their glorious actions, unless by us in speech they are gloriously set forth, have been achieved by their exertions in vain, can it be doubted that they are used shamefully?

To show you, men of Athens, that all the arguments that we address to you are meant sincerely for right and justice,[2] and that nothing is said by us for trickery and deceit, we shall now read you the law which we have prepared and propose to substitute for this one, which we say is improper. You will see by it, that we make some provision, both to save you from the appearance of acting dishonourably, and to enable any one who has an objection to any of the privileged parties, if it be well founded, to bring him before you for deprivation; and further, to secure in possession of their gifts those whose title no man would dispute. And in all this there is nothing new or of our invention: for the ancient law, which Leptines transgressed, requires that legislation shall be so conducted: that whoever considers any of the existing laws to be faulty may indict it, but shall himself bring in another, what on repeal of the former he proposes to enact, and that you shall sit in judgment and choose the better law. For Solon, who prescribed this method of legislation, never thought it right, that, when the judges[3] who are chosen to superintend the laws, before they enter upon

[1] "Plato, Menex. c. 21: εἴτις ἐστὶ τοῖς τετελευτηκόσιν αἴσθησις τῶν ζώντων. Lycurgus in Leocr. p. 231: εἴτις ἐστὶν αἴσθησις τοῖς ἐκεῖ περὶ τῶν ἐνθάδε γιγνομένων. Cicero, Philipp. ix. 6: *Mihi autem recordanti Servii Sulpicii multos in nostrâ familiaritate sermones gratior illi videtur, si quis sensus in morte, ænea statua futura, &c.* Sic antiquitas sæpe Manibus sensum tribuit et cognitionem quandam rerum terrestrium." —F. A. Wolf. See Vol. II. p. 320.

[2] Ἐπὶ πᾶσι δικαίοις. F. A. Wolf: "Convenienter summæ æquitati;" propriè, "conditionibus æquissimis." Auger: "avec droiture et sincerité." Pabst: *ganz nach Wahrheit und Recht.*

[3] The Thesmothetæ: *die gesetzgebende Behörde*, as Pabst calls them. (See Appendix IV.) Τοὺς ἐπὶ τοὺς νόμους κληρουμένους. Pabst: *welche zur Einführung der Gesetze gewählt wird.* Auger: "choisis par le soit pour veiller aux loix."

office, are twice examined, in the council and before you in the court, the laws themselves, according to which they have to exercise their official duties and the people their political rights, should be introduced at hap-hazard, and passed without examination. Then indeed, while they legislated in this way, they used the existing laws, and did not propose new ones. But ever since certain statesmen becoming powerful, as I am informed, got liberty for themselves to legislate at any time they pleased and in any manner, contradictory laws have been so numerous, that for some time past you have been appointing men to sort out the contradictory, and still the thing cannot come to an end: laws are in no way different from decrees; nay, your laws, according to which decrees ought to be framed, are more recent than the decrees themselves.[1] However, that I may not talk only, but produce the law of which I speak, here, take the law which guided the legislation of our predecessors. Read:

[*The Law.*]

You observe, men of Athens, how Solon, how admirably he directs the laws to be passed: first, before you, a jury, before whom all other measures receive their sanction; secondly, not without repealing inconsistent laws, so that there may be one law for every subject, and that this very thing may not confuse unlearned people, and give those who are acquainted with the whole code an advantage over them, but that all

[1] "De Legum novarum super novas subinde acervatarum immensâ multitudine Demosthenem queri apparet. Jam quid sibi velint verba *ψηφισμάτων οὐδ' ὁτιοῦν διαφέρουσιν οἱ νόμοι*, ipsa explicatio docet quæ additur, hæc: *νεώτεροι οἱ νόμοι τῶν ψηφισμάτων ὑμῖν εἰσίν*. Scilicet quum Athenis sancitum esset, ut psephismata omnia fierent e præscripto legum receptarum, (*τὰ ψηφίσματα γράφεσθαι κατὰ τοὺς νόμους*,) unde etiam is obnoxius esset *γραφῇ παρανόμων*, quo auctore psephisma aliquod legibus contrarium esset factum: respublica recte dici potuit turbari legibus nimis sæpe novis rogandis, eâque re tolli id ipsum, quod inter psephisma et legem maxime videretur differre (*ἐν ᾧ ψηφισμάτων μάλιστα οἱ νόμοι διαφέρουσιν*). Atqui hoc illud est, quod, quum psephismata et propter subitas necessitates scriberentur, et essent temporaria, ut, ubi illæ desiissent, neque ipsa diutius valerent, leges in republicâ propter stabiles causas latæ vim et auctoritatem habebant perpetuam. Tum ergo *οὐδ' ὁτιοῦν διαφέρουσιν οἱ νόμοι ψηφισμάτων*, quando adeo frequenter leges novæ rogantur, veteres abrogantur, ut earum imperium non diuturnius sit, quam psephismatum."—F. A. Wolf. On the subject of Athenian legislation, see Vol. II. Appendix VII.

may be able to read the same enactments and to learn their duties simply and clearly.[1] And previously to this he ordered them to be fixed up in front of the heroes,[2] and to be delivered to the secretary, and to be read by him in the assemblies, so that you may hear them frequently and consider them at leisure every one of you, and then, whatever is just and expedient, you may adopt. Of these regulations, numerous as they are, not one did Leptines observe, or you would never, I think, have been persuaded to accept the law. We, O Athenians, have observed them all; and we introduce in the place of his law one that is far better and more just, as, when you hear it, you will allow. Take and read first the parts of this statute which we have indicted, secondly, what we say ought to be enacted. Read:

[*The Law.*]

These are the parts of his law which we arraign as objectionable. Read the following, which we say is better. Attend to it while it is read, men of the jury. Read:

[*The Law.*]

Stop. This is found among the laws which are yet in force; a plain and excellent provision, men of Athens: that whatever grants the people have made shall be valid. Heaven and earth, how just! Leptines then should not have passed his law before he had indicted and repealed this. Leaving this statute as a testimony of his own illegal conduct, he still proceeded to legislate, notwithstanding that another statute makes a law indictable for this very thing, if it be contrary to the previous laws. Take the law itself:

[*The Law.*]

That all the grants made by the people shall be valid, and that none shall enjoy the immunity which the people have granted—is it not a contradiction, O Athenians? Manifestly.

[1] As to the construction of this sentence I have followed F. A. Wolf. Yet I am not clear that it should not be construed thus: ἵνα τὰ δίκαια ᾖ ταὐτὰ πᾶσιν ἀναγνῶναι, κ. τ. λ. "That our legal ordinances may be the same for all to read, and simple and easy to understand."

[2] The statues of the Eponymi. See Vol. II. Appendix VII.

But not so in the law which my friend here[1] proposes to substitute. By this your grants are valid, and a fair plea may be urged against any persons who have imposed on you, or who afterwards offend, or are generally unworthy; by means of which you may prevent any one you please from retaining his grant. Read the law:

[*The Law.*]

You hear, men of Athens, and understand: it is here provided, that the deserving shall keep their gifts, and the undeserving, if they get anything wrongfully, may be brought to trial and deprived, and you shall have it in your power for the future to grant or not to grant anything, as is just. That this law is not equitable and proper, Leptines will hardly assert; if he does, he will not be able to prove it; but what he said before the judges, he will perhaps say to mislead you. He declared, that this law had been put up against his own[2] for a trick, and that, if his should be repealed, this would not be passed. Now the ancient law, in pursuance whereof the judges placarded both for your perusal, clearly provides that, if his law be repealed by your verdict, the amended one shall be in force. However, I will pass that by, lest there should be a contest about it;[3] and I will go to

[1] Aphepsion.

[2] Παραγεγράφθαι is thus explained by Reiske: "promulgatam, publico in loco propositam et fixam et in tabulâ perscriptam esse, ut ad cognitionem omnium veniret." But this is προγεγράφθαι, not παραγεγράφθαι. Παρὰ denotes that the one law was fixed up by the side of the other: which was done, that the people might more easily compare them together. The commentators do not notice this error of Reiske. Pabst's version however is correct: *sey das Gesetz dem seinigen engegengestellt.* And F. A. Wolf in his Prolegomena (139), referring to this passage, says: "Rem ab actoribus delatam reperimus ad Thesmothetas, eorundemque permissu novam legem Demosthenis Leptineæ in albo adscriptam, παραγεγραμμένην."

[3] F. A. Wolf expresses his surprise, that after so positive an assertion by Demosthenes, that the new statute would come into force upon that of Leptines being repealed, he should intimate any apprehension of a contest upon the point. We, who live in a country where the uncertainty of the law has almost passed into a proverb, can very well understand how doubts and difficulties might arise in the construction of Athenian law. And in this particular case I can easily imagine what Leptines might have to say upon the question. We know that an Athenian citizen, who desired to pass a new law, brought it in the regular manner before the Nomothetæ, as explained in Vol. II. Appendix

another point. Of course, when he says this, he admits that our law is better and juster than the one which he has himself enacted: he raises a question only as to the mode of passing it. First then I say—he has many remedies against the party proposing the amendment, by which, if he does not choose to pass his law, he may compel him. Secondly—we pledge ourselves, myself, Phormio, any one he likes, to proceed with the law. And you surely have a law subjecting any man, who by his promise deceives the people or court or council, to the severest penalties. We pledge ourselves; we promise. Let the judges write down these words: let the thing be on this condition. Do ye nothing unworthy of yourselves: and if there be any worthless person who has got the privilege, let him not retain it, but be separately tried according to this law. Should he say that this is idle talk, here at least is something more than talk: let him pass it himself, instead of saying that we will not. Surely it is more respectable to bring in a law which you have pronounced to be good, than this which he proposes of his own manufacture.

It seems to me, O Athenians, that Leptines (and pray don't be angry, for I shall say nothing disrespectful of you,) either has not read the laws of Solon, or does not understand them.

VII. If there was an existing law at variance with the one proposed, the public advocates defended it, the Nomothetæ considered which was the better of the two, and if they decided in favour of the new one, that was passed, and the other repealed. If the primary object were to repeal an old law, the proceedings were still similar; for an existing law could not be abrogated without a new one being introduced in its place. The case however was different, where a man sought to repeal a recently-enacted law on any such grounds as would have subjected the proposer of it to a γραφὴ παρανόμων, if prosecuted within the year. Then, I apprehend, it was not necessary to propose a new law in the place of the one impeached, but sufficient to set up the old law which that had superseded. And if the impeaching party chose at the same time to bring in a law of his own, the formalities necessary to the introduction of all statutes were not dispensed with: and he would have to carry his law before the Nomothetæ in the regular way. There would have to be a double trial, one before a jury called together by the Thesmothetæ for the repeal of the law impeached; another before the Nomothetæ for the passing of the new law. The present trial was one of the former kind: and Leptines might argue, that, even if the jury thought proper to repeal his law, Aphepsion would still have another ordeal to go through before his own law was accepted, and that perhaps he would choose to drop it altogether. Compare page 498.

For when Solon passed a law[1] empowering a man to give his property to whom he pleases, if he has no legitimate children, not that he might deprive the nearest relatives of succession, but that, by throwing the chance open to all, he might excite emulation to do mutual kindnesses; but you on the contrary have introduced a law forbidding the people to give anything of their own to any one; how can it be said that you have read the laws of Solon or understand them—you that bereave the state of patriots, by announcing and declaring that those who befriend her shall get no advantage by it? Again—this is one of the esteemed laws of Solon; that no man may speak evil of the dead,[2] not though he is himself abused by the children of the dead. You don't speak evil, you do evil to our deceased benefactors, finding fault with one man and depreciating another, whose merits concerned not them. Are you not very different from Solon in spirit?

A man very seriously reported to me, that, with respect to he giving no reward to any one however deserving, they are prepared with an argument of this kind; that neither the Lacedæmonians (who are well governed) nor the Thebans give such honour to any of their own people, and yet there are doubtless good men among them. All these, O Athenians, are incitatives to make you abolish the immunities, but by no means honest arguments, as it appears to me. For I am not ignorant that the Thebans and Lacedæmonians have different laws, customs, and governments from us. The very thing, for example, which these men will do if they employ this argument, is not lawful at Lacedæmon; to praise the institutions of the Athenians or any people: far otherwise: it is compulsory to praise and to do what suits the Lacedæmonian government. Besides, although the Lacedæmonians have no such regulation as ours, there are other honours in their state, the introduction of which among us would be deprecated by the whole people. What are these? I will not give them in detail, but will describe one in which the

[1] See what I have written on the Attic law of inheritance under title *Heres* in the Archæological Dictionary.

[2] *De mortuis nil nisi bonum* is an ancient maxim. Shakspeare says, in the second part of Henry IV., Act I. Scene 1,

And he doth sin that doth belie the dead.

rest are comprehended. When a man for his good conduct is chosen into the Council of Elders,[1] (as they term it,) he is a

[1] Demosthenes somewhat overrates the political importance of the Spartan council; which however in ancient times had a larger power than it possessed at this period. Cicero speaks of it in similar terms in the Cato Major (c. 6): "Apud Lacedæmonios ii qui amplissimum magistratum gerunt, ut sunt, sic etiam nominantur senes."

The Spartan government was composed of four different powers: 1. the Kings; 2. the Council; 3. the Ephors; 4. the Popular Assembly.

The two Kings, representatives of the two Heraclid families descended from Eurysthenes and Procles, united in their persons (according to the custom of the heroic age) the functions of priest and general. Their office was one of honour and dignity; but their political power was very limited. They presided over the council, and were the judges in certain civil causes. But their highest and most important prerogative was the command of the army; and they were allowed to exercise an absolute authority in all military operations, especially in wars at a distance from home.

The Council of Elders consisted of twenty-eight members, beside the Kings. The office was held for life: the members were chosen for some supposed merit or superior virtue by the popular assembly, and were obliged to be at least sixty years of age. Their duties were chiefly deliberative and judicial. They had, like the Council of Five Hundred at Athens, to prepare measures to be laid before the Popular Assembly; and they also held a criminal court, and exercised powers of a censorial character, like the Council of Areopagus.

The Ephors were a college or council of five, annually elected from the whole body of the people, without any qualification of age or property. They were perhaps at first designed to be a check upon the other authorities; but in course of time they encroached upon the prerogatives both of the Kings and the Council of Elders, and became the paramount power in the state. We find them performing or directing most of the principal acts of administration; such as convening the Popular Assembly, transacting business with foreign ambassadors, subscribing treaties, sending out troops, giving instructions to the Kings, or recalling them home. Two of the Ephors frequently accompanied the army, to watch the proceedings, while the other three remained at home. They exercised powers of an inquisitorial and summary character, not only over the citizens at large, but over the Kings themselves. They could summon the Kings before the supreme criminal court, or for minor offences bring them before their own tribunal. Thus, they fined Agesilaus for trying to make himself unduly popular. They imprisoned Pausanias, previously to taking measures against him for his misconduct. (Thucydides, i. 131.) In short, as Müller says, they became the moving element in the Spartan constitution.

The Popular Assembly was composed of citizens not less than thirty years of age. It had nominally the power of passing laws and electing priests and magistrates, determining questions of war and peace, treaties with foreign states, and the like. But in all such matters it acted under the check and control of the higher authorities, having the right

ruler over the many. For there it is a prize of merit to share the government with your peers; whereas here the people govern, and there are curses[1] and laws and checks[2] to prevent any one else getting the mastery, but crowns and immunities and maintenance and the like to be got for being virtuous. And both these customs are right enough, both theirs and ours. Why? Because oligarchal states are kept in harmony by all who are at the head of affairs being on an equality, whilst the freedom of democracies is preserved by the competition of virtuous men for the honours of the people.

With respect to the Thebans not honouring any man, I think I may fairly state this—The Thebans, O my countrymen, take more pride in ferocity and iniquity than you in liberality and love of justice.[3] I pray, (if the prayer be lawful,) that this distinction may never cease: that they may neither praise nor recompense people who do them service: that they may treat their kindred as they have done; (you know how they dealt with the Orchomenians:) and that you on the contrary may reward your benefactors, and get what is due from your fellow-countrymen by force of law and reason.[4] Generally, I think, it is time enough to praise the laws and customs of other men and to censure yours, when it can be shown that they are in a better condition than you. When you however, as I rejoice to say,[5] in regard to public

only to accept or reject measures brought before it, not to originate any; so that, in effect, the Spartan government was an aristocracy, or rather an oligarchy. On some occasions the Ephors convened a small assembly, consisting only of a select class of citizens, perhaps the Ὅμοιοι, or citizens possessing their full rights, as distinguished from the Ὑπομείονες. (See Xenophon, Hellen. iii. c. 3, s. 8, where other interpretations are given in Schneider's note.)

[1] See Vol. II. p. 102.

[2] Φυλακαί. Pabst: *Vorsichtsmassregeln.* Reiske: "Id est, magistratus, quibus injunctum esset ut viderent, ne quid detrimenti libertas civilis caperet."

[3] As the Thebans were under a democratical government, the last argument did not apply to them: he therefore attacks their national character. As to Orchomenus, see Vol. II. p. 266.

[4] Auger: "et d'engager vos citoyens par des voies légitimes et raisonnables à s'acquitter de ce qu'ils vous doivent."

[5] Καλῶς ποιοῦντες. "Formula orationi injicitur. ubi nos injicimus *Dei beneficio,* significantes nihil nos invidere, gaudere potius et congratulari."—F. A. Wolf. Auger: "grace au ciel." Pabst: *durch die Gunst des Glückes.*

measures, in regard to unanimity and everything else, are faring better than those people, why should you despise your own customs and follow theirs? Even if theirs should appear better in theory, yet, for the good fortune which you have enjoyed under the existing institutions, it is well to adhere to them. If on another point I may speak my mind, I would say, it is not right, men of Athens, to quote laws of the Thebans or the Lacedæmonians for the purpose of damaging our own: it is not just that you should be ready to kill a man who established among us any of the usages which make them great, and yet that you should give ear to persons advising the destruction of a system by which our democracy prospers.

They have another argument ready, namely, that in the time of our ancestors we had men who, notwithstanding they performed many services, never got any such reward, but were content to obtain an inscription on the busts of Hermes:[1] and perhaps he will read you that inscription. I believe, O Athenians, it is in many respects inexpedient for the commonwealth to urge such an argument; and it is unjust besides. For if any one asserts that those ancients too were

[1] The Hermæ were busts or heads of the god Hermes (Mercury), placed upon square blocks or pillars, generally of stone. They were common in most parts of Greece, especially at Athens; and in later times were used by the Romans to adorn their villas and gardens. The Athenians set them at the doors or in the courts of their houses, and frequently also in other places; as in porticoes, libraries, and the front of temples. Some were in the gymnasia, with the names of the victors inscribed upon them; others were used as sign-posts or mile-stones in the highways. Hipparchus, the brother of Hippias, placed them at the corners of the streets and roads, with pithy epigrams, to convey moral instruction to the people. The reverence with which they were regarded is proved by the great excitement attending their mysterious mutilation on the eve of the Sicilian expedition. (See Thucydides, vi. 27, 53, 60, &c.) The busts referred to by Demosthenes are probably those kept in the Portico called ἡ τῶν Ἑρμῶν Στοά, of which Æschines makes mention in the Oration against Ctesiphon (p. 80), and the inscription the same which is there quoted, celebrating the victories of the Athenians on the Strymon. Æschines says that the victors asked the people for a reward, and the people gave them leave to set up three Hermæ, on condition that they did not inscribe their own names upon them—ἵνα μὴ τῶν στρατηγῶν ἀλλὰ τοῦ δήμου δοκῇ εἶναι τὸ ἐπίγραμμα. Though there were three inscriptions, they are here spoken of as one because they relate to the same subject and occasion. See Schaefer's note in the Apparatus Criticus.

unworthy of honour, let him say who is worthy, if no one is either in former or in later days: and if he says no one, I shall be grieved for the commonwealth, to find that no one throughout all time has been worthy to receive a favour.[1] Should he admit that those were good men, but prove them to have obtained no recompense, he accuses the commonwealth plainly of being ungrateful. That however is not so: very far from it. The fact is, when a man insidiously misapplies his arguments,[2] they cannot help having an awkward appearance. How the truth of the matter stands, and how it is just to argue, I will explain to you. There were many estimable men in former times, O Athenians, and our commonwealth honoured then also the virtuous: but the honours and everything else of that age were according to the practice

[1] I neither agree with F. A. Wolf, in thinking that the words, *εἰ μήτε τῶν πρότερον μηδεὶς μήτε τῶν ὕστερον*, ought to be expunged, nor with Schaefer, in interpreting them, "nemone nec priorum nec posteriorum." The argument, which Reiske has not badly paraphrased, runs as follows:—

"If Leptines or any of the advocates should say, that the men of former times were unworthy to be honoured, let him tell us who is worthy, when by his own hypothesis there is no man worthy, either in ancient times or modern. He must say that no one is worthy; and if so, I can only lament the fortune of Athens, for never having had any citizens of merit. On the other hand, if he should say that the men of former times deserved recompense, but got none, he brings a charge of ingratitude against the country. The adversary using this argument is thus driven into a dilemma. He must either contend that Athens has never had any deserving men, or that she has been ungrateful to them. Each of these charges is false."

To the *εἰ μὲν γὰρ* the apodosis is not *εἰ δὲ μηδένα*, but *καὶ μὴν εἶγε*.

[2] 'Επὶ μὴ προσήκοντα πράγματα τοὺς λόγους μεταφέρῃ. "Applies his arguments to cases that are not in point—subjects that are irrelevant." Δυσχερεῖς. F. A. Wolf: "repugnantia inter se et absurda:" which is the implied rather than the express meaning. Pabst: *gehässig*.

The orator's argument is as follows: "It is generally a true proposition, that we should adhere to the practice of our ancestors. Leptines misuses and perverts this principle, when he contends that, because our ancestors never granted immunities, therefore we should grant none. For though our ancestors did not give immunities, they gave other rewards to deserving men. The true point of the question is, did our ancestors reward men of merit? I say they did; and I will prove it."

In support of his assertion, Demosthenes cites one example only; and as he well knew that the Athenians in former times were not so lavish of their honours as they had been in his own time, he denounces the supposed argument of his adversary, as being disgraceful to Athens, if it were true.

of that age, while the modern are according to modern practice. Why do I make this statement? Because I should say that the men of a former age obtained from the commonwealth anything they desired. What proof have I? That they gave to Lysimachus,[1] one of their worthy contemporaries, a hundred roods[2] of plantation in Eubœa and a hundred of open ground, besides a sum of a hundred minae and four drachms a day. And for these things there is a decree of Alcibiades, in which they are recorded. For then our state was rich both in land and money: now it is to become rich:[3] so may I speak without using offensive language. But who, do you suppose, now would not prefer the third part of these things to the immunity?

To prove the truth of my statements, please to take this decree. Read:

[*The Decree.*]

You see, men of Athens, this decree proves, that it was the practice of your ancestors to reward the deserving: if not with the same honours as we do, that is another affair. Admitting however, that neither Lysimachus nor any one else has ever had a gift from our ancestors, why should those to whom we have made grants be deprived of them any the more for that? No wrong is committed by those who don't give what they don't choose, but by those who give and afterwards take away without a cause. If indeed it can be shown, that your ancestors have taken aught away that they gave to any one, I concede that you may do the same, though the disgrace really is not altered: but if it cannot be shown that this has at any period been done, why should the example be set in our time?

You must further, O Athenians, bear in mind and consider, that you are here sworn to give sentence according to the laws—not those of Lacedæmon or Thebes, not those which our earliest ancestors used, but those under which the men whom Leptines now deprives by his statute received their

[1] Lysimachus was the son of Aristides. He was not a man of distinction, like his father, yet may have earned for himself the reputation of a good citizen. That he received these grants at an advanced age, appears from the circumstance that Alcibiades moved the decree.

[2] The *plethrum* was somewhat less than a rood.

[3] A euphemistic way of saying, "now she is poor."

immunities—and, wherever there are no laws, to decide by the principles of justice.[1] Very properly. Apply then those principles to the whole of the statute. Is it just, O Athenians, to honour your benefactors? It is just. Again; is it just to let a man keep what you have once given him? It is just. Then act so yourselves, that you may observe your oaths: and if any one says that your ancestors acted otherwise, resent it, and be sure that whoever cite them as examples, insinuating that they received great obligations and rewarded no one, are base and ill-educated men: base, because they falsely accuse your ancestors of ingratitude; ill-taught, because they are ignorant that, if the charge were ever so true, they should rather have denied than have asserted it.

I believe that Leptines will urge this argument too: that the law does not take statues and maintenance from parties who have received them, nor from the state the power of honouring worthy men; but that you will be able either to erect brazen statues, or to grant maintenance or anything you please, except this. In regard to what he will say he leaves to the state, I must observe, that if you take away anything that you have given a man before, you will render all your remaining gifts insecure. For how will the grant of a statue or of maintenance be more secure than the grant of immunity, when it will appear you have given that to persons formerly and taken it away? And even if no inconvenience were to result, I don't think it would be proper to put the commonwealth in this dilemma, that she must give to all indiscriminately the same honours as to her greatest benefactors, or, in default of so doing, make to some no requital at all. For great services it is not our interest that occasions should frequently arise, nor is it easy (methinks) to perform them:[2] but for those of the middling

[1] Γνώμῃ τῇ δικαιοτάτῃ. "According to a fair and honest judgment—according to your sense of equity and justice—according to right and justice." Pabst: *vom Recht und von der Billigkeit Euch bei den Entscheidungen leiten lassen.*

[2] It is not desirable to have a recurrence of those evil days, which required extraordinary services to deliver our country from tyranny or a foreign yoke. We don't want every day to have tyrannicides, like Harmodius and Aristogiton, or liberators, like Conon and Thrasybulus. Nor are such men always to be found, when the occasion for them arises. But good and honest statesmen, competent in ordinary

kind, those that are within reach in peaceful and constitutional times, such as loyalty, integrity, diligence, and the like, I consider it both expedient and just to give a recompense Therefore should the rewards also be kept distinct, that each man may receive from the people such reward as he appears to deserve. In regard to what he will say he leaves to the parties honoured, one class of them will have a very simple and fair plea, claiming to keep all that you gave them for their services; the other will say, that whoever tells them they have anything left is a cheat. For a man whose services were judged to have merited immunity, and who obtained from you this honour alone, whether he be an alien or a citizen, after he has been deprived of it, what privilege has he remaining, Leptines? Surely none. Don't denounce the one class as worthless in order to rob the other, and then, because of what you leave to the latter, rob the former of the sole thing which they have received. To speak plainly : the worst is, not that we shall wrong two or three persons more or less, but that we shall render the honours with which we have remunerated certain people insecure: and I am most urgent not for the immunity, but that the law may not introduce a vicious practice, and one by which every grant will be insecure which the state confers.

The craftiest argument which they imagine they have devised, to induce you to revoke the immunities, it is better to mention beforehand, lest you should inadvertently be misled. They will say, that all these charges of the choral and gymnastic direction are to be classed among religious duties :[1] and it would be a shocking thing for any one to be

times to perform their duties to the republic, are always needed, and generally to be found; and there ought to be rewards for them, proportioned to their merits.

[1] The religious duties here referred to were certain sacrificial and devotional offerings expected of the better class of citizens. Such is the opinion of F. A. Wolf, who thus writes in his Prolegomena (c. 71, note 46) :—

"Pertinuit immunitas sacrorum eo, quod cives debuerunt victimas et alias res, fortasse pecuniam quoque erogare in templa, sacrificia et alia ejusdem generis: ac de his ipsis vel parte eorum accipiam etiam τὰ γέρα Æschini memorata in loco insigni Orat. in Ctesiph. p. 56. Confirmatur hoc quodammodo ab Aristotele, qui de magnificentiâ loquens in Ethic. Nicom. iv. 5, sumtus in templa, anathemata et sacrificia conjungit cum choragiâ, trierarchiâ et ἑστιάσει."

exonerated from duties of religion. For my part, I hold it to be just for persons who have a grant from the people to be exempt from these charges: but what my opponents will do, if they urge this argument, I regard as shocking. For if, what in no other manner they can prove it lawful for you to take away, they endeavour to prove[1] in the name of the gods, surely their conduct will be most shocking and impious. It appears to me, that acts for which the gods are appealed to should be such as, even if done under human sanction, would not be characterised as base. That it is not the same thing to have immunity from religious duties and from official services, but that my opponents transfer the name of the official services to the duties of religion for the purpose of deceit, I will bring Leptines himself before you as a witness. For in drawing up the commencement of this law he says—'Leptines moved: in order that the richest men may perform the official services, no one shall be exempt but the descendants of Harmodius and Aristogiton."[2] Now, if it were the same thing to have exemption from religious duties and from official services, what did he mean by adding that clause? for not even to those men is exemption from religious duties granted. To prove that it is as I say, please to take first the copy of the pillar, then the commencement of the law of Leptines. Read:

[*The copy of the Pillar.*]

You hear the copy of the pillar, men of Athens, ordering them to be exempt, save from religious duties. Now read the commencement of the law of Leptines:

[*The Law.*]

Good. Put it down. After the words, "in order that the richest men may perform the official services, no one shall be exempt," he added, "but the descendants of Harmodius and Aristogiton." With what object, if to do religious duty is to perform official service?[3] For, if he use this argument, it

[1] Ποιεῖν· *i.e.* δεῖξαι δίκαιον ὑμᾶς ἀφελέσθαι.—Schaefer.
[2] See Appendix V.
[3] "Démosthene dans sa harangue contre Midias pense differement que dans celle-ci. Il y soutient que la charge de Chorege est une fonction publique et sacrée."—Auger.

will appear that he has himself framed a clause contrary to the pillar. And I would fain ask Leptines a question—From what can you say that either you leave or our ancestors granted them immunity, when you say the official services appertain to religion? To all the war-taxes and the naval charges by the ancient laws they remain liable; and from the official services, if they appertain to religion, they have no exemption. It is written however, that they shall be exempt. From what? From the aliens' protection-tax? for this is left. Surely not; but from the ordinary official services, as the pillar declares, as you have defined it in your law, as is proved by a length of bygone time, during all which no tribe ever ventured to nominate one of their family to be choir-master, no other nominee to offer them the exchange. Should he venture to contradict this, you must not listen to him.

Again, they will tell you perhaps in an off-hand way,[1] that some persons, pretending to be Megarians and Messenians,[2]

[1] Reiske thus interprets ἐπισύρειν: "festinanter, temere, tumultuarie aliquid agere aut dicere, sive præ ignoratione veri, sive dissimulatione, quo auditores urgendo excludas a sedatâ rei consideratione. Qui sic loquitur, et ipse super re propositâ non incedit sed quasi volutatur, et coronam circumstantem insistere disputationi non patitur, sed agit ruitque, quo errorem injiciat." And F. A. Wolf to the same effect: "Nostrates vulgo simillime et origini vocis Græcæ congrue: *über etwas hinweghuschen, etwas hinschleudern.*" Pabst: *im Vorbeigehen vorbringen.* Auger adopts the reading διασύροντες.

[2] The facts upon which this argument is founded are not disclosed to us. It would seem however, that the Athenians had passed some decree in favour of the Megarians and Messenians, perhaps giving them exemption from certain duties. The Megarians had become friendly to Athens since the Peloponnesian war. They received some of the exiles during the tyranny of the Thirty. (Xenophon, Hellen. ii. c. 4, s. 1.) They assisted the Athenians in their contest with Philip, who attempted in vain to get Megara into his power. (See Vol. II. pp. 325, 382.) The Messenians of Naupactus had always been closely connected with the Athenians, to whom they owed their foundation (see Thucydides, i. 103); and friendship was established between Athens and the new state of Messene after the battle of Mantinea. Leptines would perhaps contend, that the grant of exemption occasioned loss and inconvenience, because many foreigners laid claim to it under false pretences, and it was difficult to distinguish who were lawfully entitled.

Pabst, following Schaefer, gives a different interpretation to the passage, rendering the words, ὡς Μεγαρεῖς καὶ Μεσσήνιοί τινες εἶναι φάσκοντες ἔπειτ' ἀτελεῖς εἰσιν, *es seyen Einige, welche selbst bekennen Megareer und Messenier zu seyn, doch für abgabenfrei erklärt worden.*

get exemption in a body, a great multitude of people, and some too that are slaves and stigmatics, a Lycidas, a Dionysius, and others of the like stamp, whom they have selected. If they make such assertions, deal with them in the following way.—Require them, if they are telling you the truth, to produce the decrees by which these persons are exempt; for no man among you is exempt, unless a decree or a law has granted him exemption. Many of this character have by the influence of your politicians become state-friends here; of whom Lycidas is one. But it is a different thing to be a state-friend and to have obtained immunity. Then don't let them mislead you: don't, because Lycidas and Dionysius and perhaps some other slaves (thanks to people who are ready to frame such decrees for hire) have been made state-friends,—don't on this account seek to rob men, who are meritorious and free-born and the authors of numerous benefits, of the rewards which they justly received from you Here again will be a flagrant indignity offered to Chabrias, if politicians of this class are not content with having made his slave Lycidas your state-friend, but will on that person's account take away a portion of his rewards, and on a false allegation too! For neither Lycidas nor any one else, to whom the people have not expressly granted exemption, enjoys it by being a state-friend. To these men the people have made no grant: my adversaries will not be able to show it; and if they are impudent enough to make the assertion, they will not be acting right.

What of all things I consider you should especially guard against, men of Athens, I have yet to mention. Granting all to be true that Leptines, arguing in its favour, will say about the law, one disgrace which, by the law being established, will fall upon the state, can under no circumstances be removed. What is this? The reputation of having deceived her benefactors. That this is a disgraceful thing, will be admitted, I suppose, by all: how much more disgraceful it is to you than to others, allow me to explain. You have an ancient law, one of those in good esteem, that, if any man deceives the people by a promise, he shall be brought to trial, and on conviction sentenced to death. Are you not then ashamed, O Athenians, at the thought of being known to do yourselves what in others you make punishable with

death? One should avoid doing everything which appears and is dishonourable, but especially that for which one is seen to be severe to others:[1] for not a doubt remains that it is wrong to do what a man himself has previously condemned.

You must further take care not to be seen doing in your public character aught that you would avoid doing in your private. Not one of you would take away anything which he gave to another in private; no, nor attempt such a thing. Do it not then in public; but require these men who are to defend the law, if they allege that any of the privileged parties is undeserving, or has not performed the conditions upon which he obtained his privilege, or if they have any other complaint against any one, to indict him according to the amended law that we introduce, whether we pass it, as we pledge ourselves and declare we will, or whether they pass it themselves, as soon as law-revisors are appointed. Each of them, it seems, has an enemy, either Diophantus or Eubulus or some one else. If they decline, if they are unwilling to take this course, consider, men of Athens, whether it is to your credit, that you should be known to have taken away from your benefactors what none of these men like to be seen taking from their enemies, and that persons who have served you, and against whom none can bring a charge, should by a law of your passing be deprived all together of their rewards, when, if there be any undeserving, perchance one or two or more, they might, upon an indictment preferred by these men, be separately brought to trial and suffer the like deprivation. I scarcely think it would be to your credit or suitable to your dignity.

Nor must we abandon this point, that the question of merit should be discussed at the time of the grant, when none of these men made opposition, but afterwards you should leave it alone, unless you have since been injured by the grantees. Should these men say that you have been, (prove it they

[1] Compare Shakspeare, Measure for Measure, Act V.:—

> It imports no reason
> That with such vehemency he should pursue
> Faults proper to himself: if he had so offended,
> He would have weigh'd thy brother by himself,
> And not have cut him off.

cannot,) it should appear that they were punished at the time of their offence. Should you confirm the law without any such ground, you will be thought to have deprived the parties from envy, and not from a discovery of their bad character. Every possible reproach (I may say) should be avoided; but this most of all, O Athenians. Why? Because envy is altogether a mark of a bad disposition, and a man who has the feeling is pardonable on no account. Besides, abhorring as our commonwealth does all disgraceful things, there is nc reproach from which she is further removed, than from the imputation of being envious. Observe how strong are the proofs. In the first place, you are the only people who have state funerals for the dead, and funeral orations in which you glorify the actions of brave men.[1] Such a custom is that of people admiring virtue, not envying others who are honoured for it.[2] In the next place, you have ever bestowed the highest rewards upon those who win the garland in gymnastic contests;[3] nor have you, because but few are born to partake of such rewards, envied the parties receiving them, nor abridged your honours on that account. Add to these striking evidences, that no one appears ever to have surpassed our state in liberality: such munificence has she displayed in requiting services. All these, men of Athens, are manifestations of justice, virtue, magnanimity. Do not now destroy the character for which our state has all along been renowned: do not, in order that Leptines may wreak his personal malice upon some men whom he dislikes, deprive the state and yourselves of the honourable name which you have enjoyed

[1] These public funerals took place in the Ceramicus, without the walls. There are four funeral orations extant: those of Pericles, in Thucydides; of Plato, in the Menexenus; of Lysias, and of Demosthenes. The last is generally held to be spurious.

[2] *Φθόνος* is the wish to bring down others to your own level: *ζῆλος*, the wish to raise yourself to theirs. The former repines at another's success: the latter prompts you to achieve the same by laudable means. *Ἐπιεικές ἐστιν ὁ ζῆλος, καὶ ἐπιεικῶν· τὸ δὲ φθονεῖν φαῦλον, καὶ φαύλων· ὁ μὲν γὰρ αὐτὸν παρασκευάζει διὰ τὸν ζῆλον τυγχάνειν τῶν ἀγαθῶν· ὁ δὲ τὸν πλησίον μὴ ἔχειν διὰ τὸν φθόνον.* (Aristotle, Rhetoric, ii. 12.) And such is the difference between envy and emulation. As Pope says—

Envy, to which th' ignoble mind's a slave,
Is emulation in the learn'd and brave.

[3] *Ἀγὼν στεφανίτης*, a contest in which the prize is a wreath. See Vol. II. p. 233.

throughout all time: regard this as a contest purely for the dignity of Athens, whether it is to be maintained the same as before, or to be impaired and degraded.

Wondering at many parts of Leptines' conduct in regard to the law, I wonder at this most: whether he is ignorant, that, as a person who made the penalties of crime severe, would be thought himself to have no intention of committing crime, so a man, who abolishes the rewards of merit, will be thought to have no intention himself of rendering service. Whether he was ignorant of this, (which is possible,) he will show presently: for he will allow you to rescind an act, the passing of which was an error on his own part. If I find him seriously exerting himself to confirm the law, I can hardly commend, though I am loth to censure him. Do not then be obstinate, Leptines; do not press for a measure, by which neither yourself nor those that hearken to you will gain in reputation; especially since the contest is no longer hazardous to you. For by the death of Bathippus, the father of my friend Aphepsion, who indicted him while he was yet responsible, the time has elapsed, and now the whole question is about the law itself, and Leptines is in no danger.

I hear, you say this too—that three persons have indicted you before my friend here, and not followed it up. If you mean to complain against them for not putting you in jeopardy, you are the most adventurous of mankind: if you take it as proof of the justice of your case, you act very foolishly. For how is the law any better, because one of your prosecutors has died before trying the indictment, or dropped it at your persuasion, or was altogether put up by you? Such arguments it is not proper even to suggest.

Advocates have been chosen to defend the law, no less persons than those able speakers Leodamas[1] of Acharnæ, Aristophon of Azenia, Cephisodotus of Ceramicus, and Dinias of Erchea. Now let me show how you may fairly stop their mouths, and see if you think it just. First for Leodamas. He indicted the grant to Chabrias, in which among other things given to him is this privilege of immunity, and

[1] Æschines (Contr. Ctesiph. 73) says of Leodamas, that he was as good a speaker as Demosthenes. As to Aristophon, see Vol. II. Appendix II. And for further information about the Σύνδικοι, see that title in the Archæological Dictionary.

appearing in court he was beaten: but the laws do not allow the same point to be twice contested with the same party, either in actions or audits or interpleader[1] or anything of the kind. Besides, it would be a gross absurdity, if on that occasion the deeds of Chabrias had more influence with you than the words of Leodamas; yet, when you have those deeds and the deeds of your other benefactors added to them, they should altogether be weaker than the words of this man. Against Aristophon I think I have many pleas to urge. He obtained his grant by your decree; comprising immunity. Of this I don't complain; for you should have the power to bestow your own upon whom you please: but it is not right, I say, that, when he was about to receive this boon, he should see no harm in it, yet, when it has been given to others, he should be angry and advise you to take it away. Further; he has moved the repaying of five talents to Gelarchus, on the ground that he gave that sum to the people in Piræus:[2] and he did right. But, Aristophon—do not let money for which there are no vouchers be paid at your request under pretext of the people's good, while you advise us to take away gifts of which the people themselves have set up memorials in the temples, and which are notorious to all men. Do not at the same time be seen moving decrees for the payment of debts, and advising to take away what has been obtained from the people. To Cephisodotus I have this much to say. He, men of Athens, is inferior to none of our speakers in eloquence. It is far better then to employ that eloquence for the punishment of those who wrong you, than for the wronging of those who have done you service. If one is to quarrel with any persons, it should rather be, as I conceive, with those who wrong than with those who serve the people. Now for Dinias. He will talk perhaps of his trierarchies and public burdens:[3] to which my answer is—If Dinias has proved himself a valuable citizen, as most assuredly I believe he has, I would rather advise him to demand some recompense from you, than to

[1] Διαδικασία was a technical term for that process in Athenian law, by which different parties contested their claims to an inheritance. It was applied also to some other cases of disputed claims. See the Archæological Dictionary; titles, *Diadicasia* and *Heres.*

[2] See ante, page 7, note 8.

[3] For which he has had no recompense. This is left to be understood, as Schaefer and Pabst admonish us.

bid you take away the rewards formerly given to others. It argues a far better man to demand honour for his own services, than to envy those for which other men were honoured.[1] But the strongest objection, which applies to all the advocates, I am now coming to. Each of them has been an advocate in divers cases before. You have a law however, and a very proper one, (not passed against these men, but to prevent the thing becoming a sort of trade and job[2] for certain individuals,) that it shall be not lawful to act as an advocate by the people's appointment more than once. Men who are to support a law and prove to you its fitness should be seen themselves to obey the existing laws: it would be ridiculous, if they defended one law and in their own persons violated another. Take and read them the law which I refer to:

[*The Law.*]

This law, men of Athens, is both an ancient and a proper one; and if they are wise, they will be careful not to break it.

A few more words and I shall sit down. I consider, O Athenians, you should be anxious to have all your laws as good as possible, but especially those on which it turns whether the commonwealth be little or great. Which be they? Those which award honour to men that serve you, and punishment to men of the opposite class. For if all truly fearing the penalties of the laws would abstain from evil courses, and all competing for the rewards of good service would determine to do their duty, what prevents the commonwealth being mighty, and all being honest men without a bad one among us?

This law of Leptines is unrighteous, O Athenians, not only

[1] Literally: "than to envy the deeds which others were honoured for having done." The construction is, *φθονεῖν ἐπὶ τούτοις ἃ ποιήσαντες ἕτεροι ἐτιμήθησαν.* It is possible however, that *ἐφ' οἷς* may be joined with *ἐτιμήθησαν*, understanding *αὐτὰ* after *ποιήσαντες*. Pabst: *als Neid gegen das an den Tag zu legen, wodurch er Andere für das, was sic thaten, belohnen und ehren sieht.* Auger more loosely: "étant beaucoup plus honnête de demander soi-même des récompenses pour les services qu' on a rendu, que d'envier à d'autres celles que leurs services out fait obtenir."

[2] Pabst: *damit diese Sache nicht von gewissen Leuten als ordentliches Gewerbe getrieben und zu ränkesüchtigen Zwecken benutzt werde.* Auger: "pour empêcher certaines gens de faire servir cette fonction ou à la cupidité ou à l'imposture."

because, by doing away with the rewards of merit, it takes from those who are zealous to serve you all the fruits of their goodwill, but because it bequeaths to the commonwealth the grave reproach of transgressing law. You are of course aware, that our greatest criminals have each but one penalty by the law, which expressly declares "And let there not be more than one penalty upon a trial; whichever the court like to impose, a corporal or a pecuniary one;[1] but both shall not be allowed." Leptines did not observe this rule: but, if any man demand requital of you, "let him be disfranchised," he says: "and let his property be confiscated." Two penalties these. "And he may be proceeded against by information and imprisonment:[2] and if he be convicted, let him be amenable to the law, which lies where a man holds office being indebted[3] to the state." He means death; for that is

[1] Παθεῖν was the term strictly applied to corporal punishment; ἀποτῖσαι to pecuniary mulcts or fines. See Appendix VIII. on the Criminal Law of Athens.

[2] More literally—"And informations shall be allowed against him—or lie against him." As to these proceedings, see Appendix VIII.

[3] Persons who were indebted to the state at Athens were subject to ἀτιμία, or disfranchisement, however the debt was contracted. Thus, if a magistrate, who had received any of the public monies, had not accounted for them; or if a lessee of public property did not pay the rents when they became due; or if a man sentenced to pay a fine did not pay it immediately; he was *ipso facto* disfranchised, and so forbidden to exercise any of his civil rights until the debt was paid. If he died in debt, the misfortune extended to his children. But he or they might at any time relieve themselves by settling the account with the state: for the object was not so much to punish the debtor, as to enforce the collection of public money. Cimon, the son of Miltiades, before he could engage in political affairs or assume the rank of a citizen, was compelled to pay a fine of fifty talents, which had been imposed on his father: and it is said that the money was advanced by Callias, in return for the hand of his sister Elpinice.

Besides this indirect method of enforcing payment of the public debts, the law of Athens provided other stringent means for the same purpose. The names of all debtors were returned to the Πράκτορες, or Collectors of the Treasury, whose duty it was to demand the money and pay it over to the Ἀποδέκται, or Receivers, and also to return to them the names of all defaulters. A registry of these was kept by the Ἀποδέκται in the Ὀπισθόδομος, the interior cell of the Parthenon, which was used for the state treasury. If the debtor did not pay before the end of the ninth Prytany, that is, before the expiration of forty-five weeks, his debt was doubled, and proceedings were taken to levy it by sale of his property. Special inquisitors, called Ζητηταί, were some-

the penalty for such an offence. Here then are three penalties. Is it not cruel and shocking, men of Athens, that it should appear to be a graver offence with you to demand requital for services, than to be found guilty of the most heinous crimes?

Disgraceful is the law, O Athenians, and vicious in character, and like a sort of envy and jealousy. And I pass by the rest. The author himself appears to indulge some such feelings: but it does not become you to imitate anything of the kind, or appear to hold sentiments unworthy of yourselves. In the name of Jupiter, let me ask—What should we pray most to be delivered from? What have all laws been most anxious to prevent? The committing of murder: of which the Council of Areopagus is appointed to have special cognisance.[1] Now in the laws upon this subject Draco, although he strove to make it fearful and dreadful for one man to slay another, and ordained that the homicide should be excluded[2] from lustrations, cups, and drink-offerings, from the temples and the market-place, specifying everything by which he thought most effectually to restrain people from such a practice, still did not abolish the rule of

times appointed to discover what property the debtor had. But in general this was done by an Informer, who delivered an inventory of the debtor's effects to the council, and received for his reward three-fourths of their value. The council handed over the inventory to the Πωλῆται, who sold the property therein specified by auction, or so much thereof as was required to satisfy the debt.

[1] Wilful murder was tried by the Areopagus. Other cases of homicide were by the laws of Draco assigned to the jurisdiction of the Ephetæ. See Article *Φόνος*, written by me in the Archæological Dictionary.

[2] A notice to the murderer to keep away from all public places and sacrifices was usually given by the prosecutor at the funeral of the deceased, and a similar warning was afterwards given by the King-Archon, when the charge had been preferred before him. We must understand that murder was considered at Athens not only a crime, but a pollution in a religious point of view, from the contagion of which it was necessary to keep the people free. Hence it was that the trial of the offence took place in the open air. The pollution extended even to cases of unintentional homicide, that were not wholly excusable; and was supposed to continue, until the manslayer had expiated it by the proper ceremonies. (See Æschylus, Eumenides, 228, 423, &c.) Justifiable homicide however left the party who committed it wholly pure. The denunciation of the murderer of Laius, put in

justice,[1] but laid down the cases in which it should be lawful to kill, and declared that the killer under such circumstances should be deemed pure. Then shall it be allowed to commit justifiable homicide under your laws, but not to demand recompense either justly or anyhow by the law of Leptines? Never consent to this, men of Athens! Do not let it appear that you have taken more pains to prohibit your benefactors from obtaining requital, than to prevent murder being committed in the city: but remembering the occasions on which you have requited the objects of your bounty, and the pillar of Demophantus,[2] of which Phormio spoke, in which it is written and sworn, that, if any man suffer in defence of the democracy, you will give the same rewards that you gave to Harmodius and Aristogiton, pronounce judgment against the law. It is impossible otherwise not to violate your oaths.

To yet one thing more I beg your attention. This law

the mouth of Œdipus by Sophocles, is borrowed from the form of Attic law, according to the custom of the tragedians:—

Τὸν ἄνδρ' ἀπαυδῶ τοῦτον, ὅστις ἐστὶ, γῆς
τῆσδ' ἧς ἐγὼ κράτη τε καὶ θρόνους νέμω
μήτ' εἰσδέχεσθαι μήτε προσφωνεῖν τινὰ,
μήτ' ἐν θεῶν εὐχαῖσι μήτε θύμασι
κοινὸν ποιεῖσθαι, μήτε χέρνιβας νέμειν,
ὠθεῖν δ' ἀπ' οἴκων πάντας, ὡς μιάσματος
τοῦδ' ἡμὶν ὄντος.

Œdipus Rex, v. 236. Confer v. 350.

[1] Οὐκ ἀφείλετο τὴν τοῦ δικαίου τάξιν. Pabst: *hat er nicht die Ordnung des Rechtes aufgehoben.* Or perhaps we may translate it: "he did not prohibit that line of conduct which is sanctioned by justice"—*i. e.* acts of justifiable homicide. Some of the cases where homicide was justifiable under the Athenian law are mentioned by the orators. Thus, it was lawful to kill a man in self-defence, or if caught in adultery with a wife, sister, or daughter, or if found committing treason against the state, or attempting to establish a tyranny. (See Lysias, De Erastothenis Cæde, 94. Demosthenes, Contr. Aristocr. 637. Lycurgus, Contr. Leocr. 165. Andocides, De Mysteriis, 13.)

[2] After the expulsion of the Thirty Tyrants, the Athenians passed a law, prepared by Demophantus, binding themselves by solemn oath to kill any man who attempted to subvert the democracy, and declaring it lawful and just to do so. The law is set out in the passage of Andocides above cited, and the oath prescribed to be taken contains (among others) the words following: Ἐὰν δέ τις κτείνων τινὰ τούτων ἀποθάνῃ ἢ ἐπιχειρῶν, εὖ ποιήσω αὐτόν τε καὶ τοὺς παῖδας τοὺς ἐκείνου, καθάπερ Ἁρμόδιόν τε καὶ Ἀριστογείτονα καὶ τοὺς ἀπογόνους αὐτῶν. The τι πάθῃ is a euphemism, as usual, for ἀποθάνῃ.

cannot be good, which makes the same provision for the future as for the past. "No one shall be exempt," it says, "but the descendants of Harmodius and Aristogiton." Good. "Nor shall it be lawful to grant exemption hereafter." Not if similar men arise, Leptines? Blame former doings as you may, know you also the future? Oh, but we are far from expecting anything of the kind. I trust we are, O Athenians: but being human, our language and our law should be such as not to shock religious sentiment:[1] and while we look for

[1] Οἷς μηδεὶς ἂν νεμέσησαι. Auger: "qui n'attirent sur nous la colère ni des dieux ni des hommes." Pabst: *dass Niemand dagegen einen Tadel vorbringen kann.*

Anything savouring of arrogance and presumption, whether in word or deed, shocked the feelings of the Greeks, and was deemed offensive to the gods, who, according to the popular belief, looked with an evil eye upon all men who enjoyed a great degree of prosperity, much more on those who boasted of it, and were elated with pride. The feeling thus attributed by the ancients to their gods is expressed by Solon in Herodotus, and illustrated by the remarkable advice which he relates to have been given by Amasis to Polycrates (Herod. i. 34; iii. 40.) Allusions to it are frequently made by the Attic writers. Thus in the Alcestis of Euripides, when Hercules has restored his wife to Admetus he says, v. 1135:—

Ἔχεις· φθόνος δὲ μὴ γένοιτό τις Θεῶν.

In the Orestes, v. 974, Electra says that the envy of the gods destroyed the great house of Pelops:—

Βέβακε γάρ, βέβακεν, οἴχεται τέκνων
πρόπασα γέννα Πέλοπος, ὅ τ' ἐπὶ μακαρίοις
ζῆλος ὤν ποτ' οἴκοις·
φθόνος νιν εἷλε θεόθεν.

Compare Supplices, v. 348. Iphigenia in Aul. 1097. Electra, 902. Æschyl. Agamemnon, 919. Sophocl. Philoct. 776.

The deity, whose peculiar province it was to chastise vainglorious mortals, to check overweening arrogance, to inspire feelings of humility and moderation, reverence for law, justice, and propriety, was Nemesis, a goddess worshipped with peculiar veneration by the Athenians. She had a temple at Rhamnus in Attica, which was destroyed by the Persians in their first invasion; but one more magnificent was afterwards built, and a statue of the goddess was made by Phidias out of some Parian marble which the enemy had brought for a trophy of their expected victory. (See Pausanias, i. 33, where the goddess is said to be Θεῶν μάλιστα ἀνθρώποις ὑβρισταῖς ἀπαραίτητος.) She was also called Adrastea, as to the origin of which name the reader may consult Blomfield's Glossary ad Æschyl. Prometh. 972:

Οἱ προσκυνοῦντες τὴν Ἀδράστειαν σοφοί·

which has been well translated—

'Tis wise to kiss the rod of Nemesis.

The

good fortune, and implore the gods to grant it we should regard all fortune as subject to human casualties. Never would the Lacedæmonians have expected to fall into such distress: never (methinks) would the Syracusans, so long a free people, and taking tribute from the Carthaginians, and ruling over all their neighbours, and having vanquished us at sea, have expected that one man, a scribe (as we are told), would become their tyrant. Nor (I guess) would the present Dionysius ever have expected, that Dion would come to attack him with a merchant vessel and a few soldiers, and expel a man who possessed a large number of ships and mercenaries and cities.[1] The future, I take it, is uncertain to all men, and small occasions are productive of great events. Therefore we should be moderate in prosperity, and show that we foresee the future.

One might pursue the argument, and show that in no

The deity was the personification of that feeling by which human beings are excited, when they see their fellow-men too highly exalted; for the heathens, as was natural, assigned to their gods the emotions which they experienced themselves, and not only such as were virtuous and noble, but many also of a different character. Νέμεσις was a generous sentiment, akin to pity, as Aristotle tells us in his instructive chapter on this subject. (Rhetoric, ii. 9.) As ἔλεος, or pity, is a feeling of pain at seeing unmerited misfortune, so νέμεσις is a feeling of pain at seeing undeserved prosperity, τὸ λυπεῖσθαι ἐπὶ ταῖς ἀναξίαις εὐπραγίαις. And both (says he) are good feelings: καὶ ἄμφω τὰ πάθη ἤθους χρηστοῦ· δεῖ γὰρ ἐπὶ τοῖς ἀναξίως πράττουσι κακῶς συνάχθεσθαι καὶ ἐλεεῖν· τοῖς δ' εὖ νεμεσᾷν· ἄδικον γὰρ τὸ παρὰ τὴν ἀξίαν γιγνόμενον· διὸ καὶ τοῖς Θεοῖς ἀποδίδομεν τὸ νεμεσᾷν. It is observable, that we have no word in the English language corresponding to Aristotle's definition of νεμεσᾷν. It is an emotion of indignation and disgust.

[1] The Syracusans were under republican government for about sixty years, until B.C. 406, when, owing partly to their intestine discords, and partly to their fear of the Carthaginians, Dionysius, the son of Hermocrates, was appointed to the chief military command, by means of which he raised himself to the throne, and reigned thirty-eight years. He was originally a scribe, or secretary, in a public office, though his parentage was honourable. (Diodorus, xiii. 96. Polyænus, v. 2. Cicero, Tuscul. Quæst. v. 20.) His son, who succeeded him, but was inferior to him in every respect, was expelled by Dion, B.C. 356, afterwards regained his power, and was finally expelled, B.C. 343, by Timoleon, who restored liberty to the Sicilian states. These events are fully related by Diodorus in his history, and by Plutarch in the lives of Dion and Timoleon. It is not true that the Syracusans ever received tribute from the Carthaginians, though they doubtless committed depredation upon their commerce.

single respect is the law proper or expedient for you: but, that you may comprehend the whole question at once, and that I may have done speaking, do what I now advise. Make your comparison; consider what will happen to you if you condemn the law, and what if you do not; then keep in mind what you think will be the consequence in either event, that you may choose the better course. If now you condemn the law, as we advise, the deserving will have their rights from you, and if there be any undeserving party, as I grant there may be, such a one, besides being deprived of his honour, will suffer what penalty you think proper according to the amended statute, while the commonwealth will appear faithful, just, true to all men. Should you decide in its favour, which I trust you will not, the good will be wronged on account of the bad, the undeserving will be the cause of misfortune to others, and suffer no punishment themselves, while the commonwealth (contrary to what I said just now) will be universally esteemed faithless, envious, base. It is not meet, O Athenians, that for so foul a reproach you should reject fair and honourable advantages. Remember, each of you individually will share in the reputation of your common judgment. It is plain to the bystanders and to all men, that in the court Leptines is contending with us, but in the mind of each of you jurymen generosity is arrayed against envy, justice against iniquity, all that is virtuous against all that is base.[1] If you follow the wiser counsels, and give judgment in my favour, you will yourselves have the credit of a proper decision, and will have voted what is best for the commonwealth; and should occasion ever arise, you will not lack men willing at their own risk to defend you.

[1] Compare Cicero, Catilin. Orat. ii. 11: "Sed si, omissis his rebus omnibus, quibus nos suppeditamus, eget ille, senatu, equitibus Romanis, populo, urbe, ærario, vectigalibus, cunctâ Italiâ, provinciis omnibus, exteris nationibus, si, his rebus omissis, ipsas causas, quæ inter se confligunt, contendere velimus: ex eo ipso, quam valde illi jaceant, intelligere possumus. Ex hâc enim parte pudor pugnat, illinc petulantia: hinc pudicitia, illinc stuprum: hinc fides, illinc fraudatio: hinc pietas, illinc scelus: hinc constantia, illinc furor: hinc honestas, illinc turpitudo; hinc continentia, illinc libido: denique æquitas, temperantia, fortitudo, prudentia, virtutes omnes, certant cum iniquitate, cum luxuriâ, cum ignaviâ, cum temeritate, cum vitiis omnibus; postremo copiæ cum egestate, bona ratio cum perditâ, mens sana cum amentiâ, bona denique spes cum omnium rerum desperatione confligit."

You must give your earnest attention to these things, and be careful that you are not forced into error. Many a time, O Athenians, instead of it being proved to you that measures were just, they have been extorted from you by the clamour and violence and impudence of the speakers. Let not this happen now: it would not be well. What you have determined to be just, keep in mind and remember until you vote, that you may give your votes conscientiously against evil counsellors. I marvel, when you punish with death those who debase the coin, if you will give ear to persons who render the whole commonwealth false and treacherous. You will not surely! O Jupiter and the gods!

I have nothing more to add, as you seem fully to understand what has been said.

THE ORATION AGAINST MIDIAS.

THE ARGUMENT.

The cause of this proceeding against Midias was an assault committed on Demosthenes with aggravating circumstances at the Dionysian festival. Demosthenes was Choragus: he had volunteered to take the office, which his tribe (the Pandionian) had not provided any one to fill for two years. In the drawing of lots he got the choice of the best flute-player; and his liberal conduct having been received with much applause by the people, he resolved to exhibit his chorus with becoming splendour, and accordingly he ordered golden crowns and handsome dresses to be prepared for them. Midias, a man of wealth, and an enemy of Demosthenes, with whom he had a quarrel of some standing, vexed to see him acquiring so much credit with the public, insulted and annoyed him in divers ways during the festival, and at last struck him with his fist upon the stage and tore his official dress. For this, on a day specially appointed after the festival for the hearing of such complaints, Demosthenes preferred a charge against Midias before the popular assembly, and procured a vote directing him to be criminally prosecuted. This vote was a sort of true bill found against Midias by the people, affording strong presumptive evidence of his guilt, but yet not conclusive; for the whole question was still to be dealt with by the judicial tribunal to which it was referred. The proceeding itself in the technical language of Athenian law was called Probole: of which some account will be given in Appendix VIII.

Whether the case was ever brought to trial before a jury, is a question not free from doubt. Dionysius, assigning the date of the oration, speaks of it as written only. Æschines, in the oration against Ctesiphon, reproaches his rival with having compromised the affair for thirty minas: nor does Demosthenes contradict him. Plutarch, in his life of Demosthenes, assumes the fact as undoubted, and contends that he settled the dispute not from any wish to spare the defendant, for he was of an unforgiving disposition; not from avarice, for the sum given was too small; but under the apprehension that Midias by his wealth and influence would be too strong for him. Modern writers have generally acquiesced in the view of Plutarch. If it be the true one, we must suppose that it was not forbidden by the Athenian law to accept compensation, and that this was not one of the cases in which the dropping of a prosecution was attended with disfranchisement. (See the Oration, page 548, Orig.) It would appear indeed somewhat strange, if Demosthenes afterwards published a speech, in which he not only exhibits vindictive feelings towards

his opponent, but takes credit to himself for having rejected all offers of compromise and having brought the defendant to trial as a public offender. There are some grounds however, furnished by the oration itself, for believing that it never was published by Demosthenes, but left by him in an unfinished state. Photius refers to certain critics who were of that opinion. Grote in his history represents that the trial actually took place; that Demosthenes delivered his speech and obtained the verdict of the jury in his favour; but that, before they proceeded to find their second verdict for the penalty, he accepted the moderate fine offered by the defendant, for fear of exasperating the powerful body of friends who came to intercede for him. If this account of the matter were reconcilable with the ancient authorities, (which it can hardly be thought to be however,) one would be glad to adopt it, as it would altogether clear Demosthenes from the charge of having hushed up so gross an affront for a paltry sum of money. A. G. Becker suggests that there were legal doubts as to the character of the offence—whether it were one of a public or a private nature—and therefore Demosthenes, feeling that his ground was not sure, had an additional motive for accepting the terms offered by his opponent.

The speech before us, whether actually delivered or only intended to have been delivered, is acknowledged to be the genuine production of Demosthenes; and is a pretty good specimen of forensic eloquence. According to our notions indeed, it is somewhat too rambling and discursive: for the orator not only goes into a long history of wrongs done to him by Midias, independent of that which formed the subject of prosecution, (a course to some extent justifiable, as tending to prove malicious motives on the part of the defendant,) but charges him with injuries done to other men, attacks his general character and the conduct of his whole life. We must bear in mind however, that a very loose practice, both in the speaking and the evidence, was permitted by the Athenian courts.

The principal object of the speech is to excite the feelings of the jury against Midias, with a view to increase the measure of his punishment. It was notorious that the assault had been committed. The people who condemned Midias in the assembly had been eye-witnesses of what he had done in the theatre. Demosthenes therefore had no difficulty to prove the main subject of the charge: he labours chiefly to show the malignant purpose of the defendant, and that, in striving to wreak his malice upon a personal enemy, he had committed a crime against the state and her religion. To make this out, he enters minutely into all the circumstances of the case; his own offer to undertake the duties of Choragus, his favourable reception by the people, his preparations for the spectacle: how Midias had immediately commenced a system of insult and annoyance, which he continued throughout the whole time of the festival, until he perpetrated the final outrage by striking him before the assembled spectators. He (Demosthenes) had sought redress in the manner specially provided for such a case by the Athenian law: he had arraigned Midias before the people, considering the offence to be one which merited a public prosecution. It was not a case of one private in-

dividual insulted by another, but of a Choragus, a public officer, whose duties at the festival invested him with a sacred character. He shows by precedents what importance the Athenians attached to the office. To strike such a man while in the performance of his duties, and to tear his official robe, argued a contempt of the commonwealth and her institutions. The festival was a holiday, during which the law forbade the execution even of legal process. If acts otherwise lawful might not be committed at this time, how unpardonable was it to commit an act altogether unlawful. Midias had no manner of excuse. He had received no provocation: he was neither drunk nor in a passion when he struck the blow. That it was an act of premeditated malice was clear from his previous conduct; in particular, from his base attempt to destroy the dresses and crowns which had been sent to the goldsmith, from his blocking up the side entrance to the stage, from his enticing away the training-master of the chorus, from his bribing the umpires, which had caused the Pandionian tribe to lose the prize. Midias had been at enmity with Demosthenes for many years. The quarrel had arisen out of the proceedings of Demosthenes against his guardians, which Midias had attempted to defeat by forcing upon him an exchange of estates with his brother Thrasylochus. The two brothers had rushed into his house, broken the doors, and behaved with brutal insolence, uttering the most indecent language in the presence of his sister, a young girl. For this Demosthenes brought an action against Midias, and recovered damages, of which down to the present time he had never been able to obtain payment. Meanwhile the defendant had never ceased to persecute him in every possible way. Among other things, he had hired a low fellow named Euctemon to prefer an indictment against Demosthenes for desertion of his post, which Euctemon had not ventured to bring to trial, and having failed to prosecute, had suffered the penalty of disfranchisement. But a yet more dreadful plot had been laid for his ruin. A murder had been committed by one Aristarchus, against whom the relatives of the deceased were taking legal proceedings. Midias offered them money to drop their proceedings against Aristarchus and to accuse Demosthenes of the crime. Two of the relations, to whom the money was offered, are called to give their testimony. It was evident from this that Midias would use any means, however nefarious, to be revenged on people who offended him. He had by a base trick procured the disfranchisement of Straton the arbitrator, for no other reason than because he had pronounced his award against him and in favour of Demosthenes. Witnesses are called to prove this; and Straton himself, who being disfranchised was incapable of giving testimony, is produced before the jury to excite their indignation against the defendant for his cruel treatment. There were a multitude of other people in Athens who had suffered grievous wrongs from the defendant. A catalogue of these is read to the court, unaccompanied (as it seems) by any proof. The great body of those whom he had injured had not dared to complain: the few that had complained were not able to obtain redress. The wealth and power of Midias encouraged him to set the laws at defiance. He had a

band of confederates ready to back him in every act of fraud and oppression. By bribing some people, by intimidating others, by an unscrupulous use of the trickeries of pleading and every kind of legal artifice, he had hitherto contrived to escape from justice. The jury had now an opportunity of punishing him for all his misdeeds at once; and they should not let it slip out of their hands. It was dangerous to leave such a man in possession of wealth, which he used only as an instrument for mischief. Midias, besides being oppressive to all men, had rendered himself universally odious by his overbearing insolence. This now, owing to the licence which he had so long enjoyed, exceeded all bounds. He had the vices of Alcibiades without his courage and abilities. Alcibiades, on account of his mad pranks, intolerable in a free state, had been exiled from Athens, notwithstanding the services that he had rendered her. But Midias had never done any service whatsoever to his country. He was mean, effeminate, and cowardly. By means of his wealth he had got the appointment of Hipparch; yet he was unable to ride through the market-place. He had given proof of what he was in the late Eubœan campaign; in which he had contrived to shirk serving with the cavalry who were under his command, and whom he slanderously denounced before the people as being a disgrace to the country. He was master of the Paralus, and had neglected to sail with it in time for an important expedition: and had further abused his trust by robbing the Cyzicenes of five talents, and rendering that people unfriendly to Athens. The honours which had been conferred upon him only increased his arrogance and presumption. The only instance, in which he had shown any appearance of liberality, was when he gave a trireme to the state: but if the circumstances were looked at, it would be seen that his motive was a base one. It was after the news had been brought of the army being in danger at Tamynæ, and the council ordered that all the remainder of the cavalry should be sent to theirassistance: Midias, to escape going out with them, volunteered to be a trierarch, by which he knew he would incur no personal danger. It was clear therefore that the people owed him no favour: he had nothing to set off against his evil deeds. When any misfortunes happened to the people, his practice was to exult over them. He never showed any pity to others, and therefore he deserved none. Even the vote of censure passed against him in the assembly had not made him in the least more humble: he had taken pains to show that he was not afraid of it, and to exhibit as bold a front as ever. The jury should give effect to the popular judgment expressed at the time of the offence; for nothing had happened since to cause any change in their feelings. He (Demosthenes) had been strongly urged to go on with the prosecution, and on no account to abandon it: he had resisted all the offers made to him by the friends of Midias and all their menaces, and was determined to press the case to conviction for the sake of public justice. Such a course was the more imperative on account of the number of foreigners who had witnessed the outrage; in whose estimation the dignity of the commonwealth would be lowered, if it appeared that such things could be done at Athens with impunity. He rebukes Eubulus and others

who were about to intercede in the defendant's behalf, warning them that they ought not from any motives of private friendship or enmity to impede the course of public justice. He (Demosthenes) was the more entitled to redress for the forbearance which he had shown in not returning the blow or resorting to any kind of violence. It was necessary that men should be punished by the legal tribunals for assaulting their neighbours: if not, people would take the law into their own hands, and the most mischievous consequences would ensue. One blow would beget another, and common affrays might terminate in bloodshed and murder. Demosthenes had respected the laws, and was entitled to their protection. If the jury did not put them in force, every man might expect that his own personal enemies would serve him as Midias had served Demosthenes. They should regard his case as their own, and give him the same measure of justice which they would look for themselves, if they suffered the same injury. They, like him, were weak in their own individual persons; they were strong only by the laws; and they should exert that power with which the constitution armed them for the protection of their fellow-citizens. They had every motive for inflicting condign punishment on Midias: the cause of the injured party, the peace of society, the vindication of the law, the honour of the state and her religion.

The date of the proceedings against Midias is a matter of controversy. From the oration itself we learn, that Demosthenes was thirty-two years of age when he commenced them. The birth of the orator is by different critics and historians (to wit, Clinton, Becker, Boeckh, Jacobs, Thirlwall, Grote, and others) variously assigned to the years 385, 383, and 381 B.C. Upon the solution of the same question depend some other important dates, more especially that of the Eubœan campaign, in which Phocion gained the battle of Tamynæ.

THE rudeness and the insolence, men of the jury, with which Midias uniformly behaves to all, are pretty well known, I imagine, both to you and the rest of my fellow-countrymen. The course which any one of you would have taken upon being grossly assaulted I took myself: I arraigned this man before the people for committing a contempt of the festival,[1] having not only received blows from him at the Dionysia, but suffered many other outrages during the whole of

[1] A man who insults the dignity of a court of justice or of either house of parliament, whether by disturbing its proceedings, or obstructing the due exercise of its authority, or by a contumacious disobedience of its orders, or by a libellous publication, or any violation of its privileges, is said in our language *to have committed a contempt.* This seems to be not an inapt version of the phrase ἀδικεῖν περι τὴν ἑορτήν, by which are designated all such offences committed during the period of the festival, as were supposed to be a profanation of its sanctity and an insult to the god.

As to the Προβολή, see Appendix VIII.

my choragic service. The assembly, taking a just and proper view, were so incensed and exasperated, so warmly sympathised with the wrongs which they knew I had sustained, that, notwithstanding all the efforts of the defendant and others in his behalf, they would not listen to them nor pay any respect to their wealth or their promises, but passed sentence against him unanimously: upon which, men of the jury, many of you who are now in court and many other citizens came up to me, urging and entreating that I would proceed with the case, and deliver the defendant over to you: for two reasons assuredly, as it seems to me, O Athenians; both considering that I had been shamefully treated, and wishing at the same time to punish him for what they had observed of his conduct upon other occasions, as an audacious ruffian who was beyond all control.[1]

Under these circumstances, whatever care had to be taken by me has been duly observed on your behalf; and now that the case is brought into court,[2] I am here, as you see, to accuse, having rejected, O Athenians, large sums of money which I might have had for not accusing, and withstood many prayers and solicitations, aye, and menaces too. For the rest, which depends on you—the more persons he has annoyed by his canvassing, (I saw what he was doing just

[1] *Ὧν ἐτεθέαντο θρασύν*—"for the ways in which they had seen him audacious;" *i.e.* "for the specimens which they had seen of his audacity." *ἐπὶ τῶν ἄλλων*—"in other cases." So in the second Olynthiac, Ἐπὶ πολλῶν μὲν ἄν τις ἰδεῖν, ὦ ἄνδρες Ἀθηναῖοι, δοκεῖ μοι, τὴν παρὰ τῶν θεῶν εὔνοιαν φανερὰν γενομένην τῇ πόλει. Reiske however and some others take *τῶν ἄλλων* to be masculine; for which there is something to be said, as *τῶν ἄλλων πολιτῶν* has occurred twice just before, and it stands in strong opposition to *ἐμέ*. Βδελυρὸς is used by Demosthenes to signify an odious and disgusting blackguard. Pabst renders it thus: *und zweitens weil sie ihn zugleich bestrafen wollten für seine frechen und übermüthigen, ja unerträglichen Gewaltthaten gegen Andere, wovon sie Augenzeugen gewesen waren.* The epithet *unerträglichen* is incorrect. That would be *οὐκ ἀνεκτόν*, not *οὐ καθεκτόν*, which is just like what Cicero (Pro Milone, 28) says of Clodius: "ejus furores, quem nullis jam legibus, nullis judiciis frænare poteramus."

[2] I am inclined to think that in the words *ἐπειδή τις εἰσάγει* there is a slight reflexion upon the tardiness of the magistrate in bringing the cause for trial. And I find the same view taken by Meier in the *Attische Process*, p. 276. Whether the introduction of the cause into court belonged to the Archon or to the Thesmothetæ, is a doubtful question. For further information upon this subject, see Appendix IX.

before the courts opened,)[1] the more confident am I that I shall obtain justice. I cannot think so ill of any juror as to suppose, that you will be indifferent to a cause in which you yourselves warmly took my part before; or that any one of you, in order to enable Midias hereafter to commit assaults with impunity, will give a verdict upon oath for aught but what he considers just.

If, men of Athens, I were about to accuse him of an unconstitutional measure, or of misconduct upon an embassy, or anything else of the like description, I should not have thought of making any request to you, considering that on the trial of such matters the accuser has only to prove his case, the defendant has to beg for mercy as well. But since, my adversary having corrupted the umpires, and my tribe having on that account been unjustly deprived of the tripod, and I myself having received blows and been insulted in a way that scarcely any choir-master ever was insulted before, I am now prosecuting that judgment which the people indignant and sympathising with my wrongs pronounced against him, I will not hesitate even to be a suppliant. For, if such an expression be admissible, I am now a defendant, inasmuch as to obtain no redress for an insult is a sort of calamity. I therefore pray and beseech you all, men of the jury, in the first place to give me a favourable hearing; and in the next place, if I prove that Midias the defendant has insulted not only me, but you and the laws and all other people, to avenge both me and yourselves. For thus the case stands, men of Athens. I have been insulted, and my person has been outraged on that occasion: but the point now to be tried and decided is, whether or no it should be lawful to commit such acts and to insult the first Athenian one meets with impunity. Therefore, if any of you supposed before, that this trial was got up for a private purpose, let them now consider, it is for the public good that no one be permitted so to behave; and thus assuring themselves that the case is one of general interest, let them give it their attentive consideration, and pronounce such verdict as appears most conformable to justice. He shall first read you the law, under which the plaints are preferred to the assembly: and then

[1] Or "before the court halls," as Pabst takes it. See Volume II. p. 219, note 1.

I will endeavour to explain to you the rest of the case. Read the law:

THE LAW.

"The Presidents shall convene an assembly in the temple of Bacchus on the morrow of the Pandia.[1] And in it they shall first submit questions concerning religion: then let them bring on for trial all those plaints preferred on account of the procession or the contests at the Dionysia, which have not been satisfied."[2]

[1] According to the reading, τῶν Πανδίων, instead of ἐν Πανδίονι, which is manifestly corrupt. Πάνδια is (according to one of several interpretations) a festival in honour of Jupiter, celebrated in the middle of the month Elaphebolion after the great Dionysia. Pabst, following Taylor, says it was the same as the festival called Diasia, which however seems to have been held in a different month. See the first Excursus of Buttmann.

[2] Upon these words I have written as follows in the Archæological Dictionary, under title Προβολή.

"Platner (Proc. und Kl. vol. i. p. 384) and Schömann (de Com. p. 238) suppose that by these words the Prytanes are commanded to bring before the people those complaints, for which satisfaction has not been made by the offender to the prosecutor; and, to show that a compromise would be legal, Platner refers to Demosthenes cont. Mid. 563, 583; to which we may add the circumstance that Demosthenes is said to have compromised his charge against Midias for a sum of money. Meier (Att. Proc. p. 275) explains it thus: that the Prytanes (or rather Proedri) were to bring before the people all the προβολαί, except those of a trifling character, for which they were themselves empowered to impose a fine. If we suppose the complaint to take the name of προβολή upon its being presented to the Proedri, the expression ἐκτετισμένη προβολή will create no difficulty; for as δίκην τίνειν signifies to pay the damages awarded in an action, so προβολὴν τίνειν may signify to pay the fine imposed by the magistrates before whom the charge was brought; and προβολήν is not improperly used for ἐπιβολήν, any more than δίκην is for τίμημα in the other case. Perhaps there is more force in another objection urged by Platner, viz. that (according to this interpretation) the not bringing the case before the assembly is made to depend on the non-payment, and not (as might have been expected) on the imposition of the fine."

The former, I think, is the true interpretation. Spalding's and Buttmann's are to the same effect. I subjoin their notes:—

"Προβολαὶ μὴ ἐκτετισμέναι h. l. dicuntur injuriæ eæ, de quibus læso non satisfactum sit ante comitia."—*Spalding.* "Confer infra, ubi Ἀριστοφῶν ἀποδοὺς τοὺς στεφάνους ἔλυσε τὴν προβολήν. Pone, ante comitia restituisse coronas Aristophontem: tum προβολὴ ne pervenisset quidem ad populum. Sane ita non jam προβολὴ facta esset hæc causa; et minus accurate itaque in lege ὅσαι refertur ad vocem προβολάς.

This, men of Athens, is the law according to which the plaints are preferred, directing, as you have heard, that an assembly be convened in the temple of Bacchus after the Pandia; and that at such meeting, when the Committee of Council have submitted for discussion the business which the Archon has conducted, they shall bring forward all questions concerning any profanation or contempt of the festival: a proper and beneficial law, O Athenians, as the event itself proves. For when, with this fear before their eyes, people are still found to play the bully, what must we expect from them, if they had no prospect of any trial or danger?

I wish to read you also this next law: by which you will clearly see both the caution of the Athenian people and the audacity of the defendant. Read the law:

THE LAW.

"Evegorus moved: When there shall take place the procession in honour of Bacchus in the Piræus, and the comedies and tragedies, and the procession at Lenæum, and the tragedies and comedies, and the procession at the Dionysia in the city, and the chorus of boys and the revels and the comedies and tragedies, and at the procession and contest of the Thargelia,[1] it shall not be lawful in these days either to distrain, or to take anything one from another, not even from debtors in default: and if any man transgress in any of these particulars, let him be responsible for damages to the aggrieved party, and let there be plaints against him as a wrong-doer in the assembly in the temple of Bacchus, as is provided in the case of other wrong-doers."

Observe, men of the jury, that, while by the former law the plaints lie against those who commit a contempt of the festival, by this you have given the plaints even against men who levy execution upon defaulters, or who take any property of another or use force for the purpose.[2] So far from

Mens tamen legis facile intelligitur; quâ ὅσαι referendum non ad προβολὰς, sed ad causas."—*Buttmann.*

I so far differ with Buttmann, that I do not consider the words of the law to be at all inaccurate.

[1] A festival held on the seventh day of the month Thargelion in honour of Apollo and Diana. See Appendix VI.

[2] Βιαζομένων. "Subaudi λαμβάνειν." *Schaefer,* who compares p. 527, μὴ τοίνυν ἐᾶτε ταῦτ' αὐτὸν λέγειν, μηδ', ἂν βιάζηται, πείθεσθ' ὡς δίκαιόν τι λέγοντι.

thinking it right that the person of any one should be insulted on those days, or the ornaments which a man might at his own cost provide for his exhibition; you allowed even that, which by action and verdict becomes the property of the judgment-creditor,[1] during the festival to remain in the hands of the judgment-debtor who possessed it originally. You therefore, O Athenians, have arrived at such a degree of humanity and piety, that on these days you suspend the obtaining of satisfaction for previous injuries: but Midias will be shown on these very days to be committing acts that merit the severest punishment. I will explain to you every particular of what I have suffered from the beginning, and then go to the blows which he finally struck me. There is not a single one of his acts for which he will not appear to be deserving of death.

The Pandionian tribe had not had a choir-master for two years: and the assembly having met, at which the Archon is required by law to allot the flute-players for each chorus, there was a discussion and a wrangling, the Archon blaming the Superintendents of the tribe, and the Superintendents the Archon; whereupon I came forward and volunteered[2] to take the office of choir-master, and on the drawing of lots I got the first choice of flute-player. You, men of Athens, expressed all of you the utmost satisfaction, both at my offer

[1] Because by the Athenian law a judgment-creditor had a lien upon the goods of the debtor from the time that the judgment became due, and he might seize them to pay his debt. See Appendix IX.

[2] According to the author of the second Argument to the Oration, Midias partly excused himself on this ground, that Demosthenes, being not regularly chosen Choragus, but only a volunteer, was not invested with a sacred, or indeed an official character. It is observable that Demosthenes himself does not argue this point at all, but assumes throughout that he held the office according to law. In another part of the same Argument it is mentioned as a fact appearing in the Oration, that, when the umpires were sworn to adjudge the prize to the best chorus, Midias said, "except that of Demosthenes." We find no such express statement as this in the extant Oration, though Midias is plainly accused of having tampered with the umpires. (pp. 520, 535.) Perhaps the passage has been lost. It quite accords with the supposed excuse of Midias, who might naturally contend, that, if Demosthenes were not a properly appointed Choragus, the umpires could not lawfully award the prize to him. And on the same ground he may have insisted, that the choristers of Demosthenes were not entitled to the usual exemption from military service.

and the chance that turned up; and you applauded and clapped your hands in token of approbation and pleasure: Midias the defendant (he alone, as it appears) took umbrage, and he never ceased persecuting me with annoyances (great and small) during the whole period of my office. What trouble he caused me by opposing the discharge of my choristers from military duty, or by offering himself as Superintendent for the Dionysia[1] and requiring you to elect him, or in other ways of that sort, I shall pass by: for I am aware that, although to me, who was then annoyed and insulted, every one of these affronts caused as much irritation as the gravest injury could have done, to you who are out of the affair they would hardly appear worth going to trial about I will mention that only, the hearing of which will excite equal indignation in you all. Indeed the next proceeding, of which I am about to speak, passes common bounds:[2] and I would not have attempted to accuse him now, had I not instantly at the time convicted him before the assembly. My sacred apparel—(all I consider sacred which a man provides himself with for the festival, so long as he uses it)—and the golden crowns, which I ordered for an ornament to my chorus, he sought, men of Athens, clandestinely to destroy, going by night to the house of the goldsmith; and he effected their destruction, but not entirely; for he was not able. Has any one ever heard of so daring an act planned or perpetrated in the city? Yet he was not satisfied with this: he even corrupted the teacher of my chorus, O Athenians; and had not Telephanes the flute-player behaved in the kindest manner to me, and determined, on seeing the trick, to drive this fellow away, and to form[3] and instruct my choristers himself, we

[1] The Ἐπιμεληταὶ assisted the Archon in superintending the business of the festival. Very likely, as Pabst supposes, they were the same as the Superintendents of the tribes.

[2] As to the construction of this clause, I agree, not with Reiske and Buttmann, who make τῶν μετὰ ταῦτα depend upon ἐκεῖνα ἃ μέλλω λέγειν—"that part of his subsequent conduct which I am about to mention"—but with Schaefer, who takes the genitive to be governed by ὑπερβολή. Pabst: *Es ist aber das, was hernach geschehen ist und ich eben erzählen will, das Uebermass alles Frevels.*

[3] Buttmann explains συγκροτεῖν in his glossary: "Verbum proprium de re ita componendâ et instruendâ ut partes omnes conspirent et concinant: ita de choro potissimum ad concentum instituendo: unde ad alias res translatum, ut Olynth. ii. 23, de copiis, θαυμαστοὶ καὶ συγ

should have taken no part in the contest, men of Athens, but my chorus would have come in untrained, and we should have fallen into the utmost disgrace. Nor did his insolence stop here: it was so exuberant, that he offered to corrupt the crowned Archon;[1] he incited the choir-masters to conspire against me; bawling, threatening, standing by the umpires while they took their oath, blocking, nailing up the side-scenes, (the public property! and he a private person!) he continued giving me unspeakable trouble and annoyance. For all that has taken place in the assembly, or before the umpires in the theatre, you, men of the jury, are my witnesses; and of all statements those are most to be relied on, to the truth of which the hearers bear witness for the speaker. Having then previously corrupted the umpires for the contest of men, he put two crowning points as it were to all his pranks:—he made a gross assault upon my person; and to him it was mainly owing that my tribe, which did best in the contest, failed to get the prize.

The indignities which he has offered to me and my fellow-tribesmen, and the contempts which he has committed of the festival, for which I preferred my plaint, are these, men of Athens, and many more, of which I will give you as full a detail as I can presently. I have other villanies of his to tell you, a large number of them, insults to a good many Athenians, many daring atrocities of this miscreant. Some of the aggrieved parties, men of the jury, dreading the

κεκροτημένοι τὰ τοῦ πολέμου." Suidas gives, as one of the synonyms, *πρὸς ἁρμονίαν ἄγειν*. Compare Schaefer's note in the Apparatus Criticus to the passage above cited. Reiske erroneously interprets it, *cogere, congregare.* And Pabst, following him: *versammeln.*

[1] It has been suggested that Demosthenes would hardly venture to accuse the chief magistrate of taking a bribe, and therefore that some inferior functionary must be designated by the words *τὸν ἐστεφανωμένον ἄρχοντα.* (See the Apparatus Criticus.) If we suppose *διέφθειρε* to be the imperfect tense, the charge is against Midias only. But taking it even as the aorist, I cannot doubt that the Archon is meant. So Ulpian understood, when he wrote, *ὁ γὰρ τὰ πλεῖστα διοικῶν τῆς ἑορτῆς ὁ ἄρχων ἦν.* And Buttmann, Auger, and Pabst are of the same opinion. Midias is represented in this oration as a person quite impudent enough to make the attempt. (See p. 542.) We have to bear in mind also, that the Archons were not generally men of wealth or eminence. (See Appendix IV.) Supposing Midias really did exercise any improper influence over the Archon, it may have been an additional inducement for Demosthenes to compromise the case

defendant and his audacity, his associates, his wealth, and what else he has about him, kept silence under their wrongs; some attempted to get redress and failed; others made up the quarrel, thinking it perhaps to their advantage. Well: they who accepted his terms have satisfaction on their private account: satisfaction for the laws, which Midias violated both in ill-using those persons and lastly in ill-using me and all the rest, it is for you to demand. For all together make one penal reckoning, whatever you deem just. I will first prove the outrages which I have suffered myself, then what you have suffered; after which I will review all the rest of his life, men of Athens, and show that he deserves not one death but a thousand.[1]

Take and read me first the evidence of the goldsmith.

THE DEPOSITION.

"I, Pammenes, son of Pammenes of Erchea,[2] have a goldsmith's shop in the market-place, where I dwell and carry on my business of goldsmith. Demosthenes, for whom I am a

[1] It will occur to some readers, in perusing what follows, that Demosthenes does not give that full history of the proceedings, or that full proof of his charges, which he had promised to do. He has just said, *βούλομαι δ' ἕκαστον ἀπ' ἀρχῆς ὧν πέπονθα ἐπιδείξας καὶ περὶ τῶν πληγῶν εἰπεῖν*, &c. (p. 518), and then, *ἐξελέγξω δὲ πρῶτον μὲν ὅσα αὐτὸς ὑβρίσθην*, &c. (p. 521). Yet, after this, the facts of the case are glanced rapidly over, and we have only the testimony of the goldsmith, although it is introduced by the word *πρώτην*, as if other evidence touching the subject of the charge was immediately to follow. Buttmann in his second Excursus contends with great probability, that there is a *lacuna* in the oration after the evidence of the goldsmith, which was followed by a series of depositions, interspersed with comments by the orator. Whether such omission was owing to the negligence of a copyist, or whether Demosthenes himself omitted part of the evidence in his edition of the speech, or whether it was first published after his death from an imperfect manuscript, is matter of uncertain conjecture. If we could rely upon what is said by the anonymous author of the second Argument, it would appear that certain passages of the edited oration have been lost. (See ante, p. 68, note 2.) Besides what is there noticed, he states that Demosthenes charges Midias with having stolen some of the golden crowns: a fact which nowhere appears in the extant oration. And it is further to be remarked that Demosthenes (p. 520) speaks of a number of golden crowns ordered for his chorus, whereas in the deposition only one is mentioned.

[2] According to Buttmann's emendation, *Ἐρχιεύς*. Another conjecture is *Περγασεύς*. Erchea and Pergasa are both Attic townships.

witness, had commissioned me to fit up a golden crown, and to make a dress with gold embroidery, that he might wear them in the procession to Bacchus; and I had finished and had them ready by me, when Midias, the party prosecuted by Demosthenes, broke into my house by night in company with some other persons, and attempted to destroy the crown and the dress, and a part thereof he spoiled, but was not able to spoil the whole, because I appeared and prevented him."

I have much also to say, men of Athens, about the injuries which he has done to others, as I stated at the commencement of my speech; and I have collected a number of his freaks and outrages, which you shall hear presently. The collection was easy; for the aggrieved parties came to me themselves. But I wish first to notice the fallacies, by which he will endeavour, as I am told, to mislead you. How they should be answered,[1] I deem it essential for me to apprise you beforehand, and most important for you to hear: why? Because the argument which prevents your being misled will cause you to vote in accordance with your oaths and with justice. Therefore you should give your especial attention to such argument, and keep it in mind, and meet him at every point when he addresses you.

First, it is pretty clear from what (as I was told) he stated to certain people in private, he will say—that, if I had really suffered what I represent, I ought to have commenced private actions against him; for the destruction of the dresses and the golden crowns, and for all the annoyance in relation to the chorus, an action for damage;[2] for the

[1] *Τοὺς ὑπὲρ τούτων λόγους* means, not what Midias will have to say, but what may be said in reply to his argument: "the observations which occur thereupon;" as Pabst expresses it: *die Bemerkungen hierüber.*

[2] The translation of legal terms, such as *βλάβη*, *ὕβρις*, &c., is necessarily attended with difficulty; nor indeed is it possible to find expressions in the English law exactly corresponding with them.

Βλάβη comprised a multitude of cases where a man suffered in his property by the tortious conduct of another, whether by an act of commission or omission. Actions founded on such causes of complaint have in our common law been called "actions of trespass," or "actions on the case," the latter term being applied where the defendant committed no act of violence, but caused an injury to the plaintiff by some negligence or breach of duty. I have thought it better to

outrage which I say I have suffered in my person, an indictment for outrage: but decidedly not to have brought a state-prosecution against him and called for the assessment

translate δίκη βλάβης not by any technical term of our law, but by one which is close to the Greek in point of form, and comprehends every case to which it could be applied. As to the Attic law, the reader is referred to Meier and Schömann, Attische Process, pp. 475—481.

Ὕβρις in common parlance signified any kind of insult, insolence, or overbearing conduct. But in the language of Attic law it was used specially to designate a personal outrage, that is, an assault attended with contumely and indignity; including, 1. assault and battery, as we call it; 2. indecent assault or violation. A person guilty of this offence might be indicted, not only by the injured party, but by any other citizen on behalf of the public: and it appears from the laws concerning ὕβρις, cited by Æschines (cont. Timarch. p. 3) and Demosthenes (cont. Mid. p. 529), that he who violated those laws might be punished even with death, if the jury pleased. The words of the laws are general, and would appear to include both classes of ὕβρις: yet there is reason to doubt whether they are not both confined to the second class. The context of Æschines undoubtedly points to the more heinous offence only. That of Demosthenes leads us to a different view; and Heraldus therefore thinks that the two orators cite different laws, Demosthenes one relating to the first kind of ὕβρις, Æschines one relating to the second. It must be remembered however, that, even where the text of the orators is free from interpolation, we can never be sure that they quote statutes fairly, much less that they construe them correctly. The mention of slaves in the law of Demosthenes is a strong proof, as Meier and Schömann observe, that the law refers only to the second kind of ὕβρις, as the mere beating of a slave would not amount to that offence. Another argument is furnished by the passage now before us. "Midias" (says the orator) "will contend that I ought to have proceeded against him by a γραφὴ ὕβρεως, not by προβολή." But if a party indicted for ὕβρις might be punishable with death according to the statute, the one proceeding was not more lenient than the other, and the supposed argument of Midias has no meaning in it. We are driven to the conclusion, that there was some way of proceeding for the ὕβρις of which Midias was guilty, which involved less grievous consequences than the accusation by προβολή. The difficulty may be solved either by supposing that the γραφὴ ὕβρεως (in a case of the first kind) did not subject the offender to the penalty of death, and that Demosthenes for his own purposes misapplies the Athenian law; or, if the law itself was general, and in terms extended to all cases of ὕβρις, yet that it was not the practice of the courts to apply it in its full rigour to complaints of mere assault and battery. (See Meier and Schömann, Att. Proc. pp. 320—326.)

From the words which occur here, δίκας ἰδίας—βλάβης—ὕβρεως, it may possibly be imagined, that a δίκη ὕβρεως (or civil action) might be maintained. Demosthenes however explains himself more fully below (p. 523), where he says, ὅτι καὶ δίκας ἰδίας δίδωσιν ὁ νόμος μοι καὶ γραφὴν ὕβρεως. From which it appears that in the former passage, if we are to

of a penalty corporal or pecuniary. I am certain of one thing, and you should be certain too. If I had not preferred my plaint to the assembly, but sued him in an action, the contrary objection would have started up, that, if there was any truth in these charges, I should have arraigned him before the assembly, and taken vengeance while the offence was recent:—for the chorus belonged to the state, and the apparel was all provided for the festival, and I the sufferer was a choir-master. Who would ever have chosen another mode of redress, rather than that which the law gives against persons desecrating the festival?—All this I am sure he would have urged then; for it is the practice, I believe, with defendants who have done wrong, in order to defeat the proceedings taken against them,[1] to suggest that others which are not practicable should have been adopted; but it is the part of wise judges, to give no heed to such arguments, and whomsoever they find misbehaving themselves, to punish. Don't then allow him to say, that the law gives me both private actions and an indictment for assault. It does give them. But let him show that he is not guilty of what I charge him with, or that, being guilty, he has not committed a contempt of the festival. It was for this I arraigned him before the assembly; this is the matter upon which you will give your verdict now. If I, foregoing the advantage of a private suit, give up my revenge to the state, and have chosen this kind of trial, from

understand δίκην in connexion with ὕβρεως, it is used in the more extended sense of "a judicial proceeding." And for this we have the authority of Pollux, viii. 41: ἐκαλοῦντο γὰρ αἱ γραφαὶ καὶ δίκαι, οἱ μέντοι καὶ αἱ δίκαι γραφαί.

The expression ἴδιαι γραφαί, "private indictments," may sound oddly to us, who are accustomed to consider all criminal prosecutions as being of a public nature. Yet the distinction is intelligible enough, and applies as well to our own jurisprudence as to the Athenian—between offences which concern the individual immediately and the state mediately, such as an assault; and offences which concern the state immediately and individuals mediately, such as treason. Prosecutions for the former were called ἴδιαι γραφαί, for the latter δημόσιαι. (See Meier and Schömann, Att. Proc. p. 162.)

[1] Τὸν παρόντα τρόπον τοῦ δοῦναι δίκην, "the method of punishment which is before the court—which is proposed." I agree with Schaefer that this reading is preferable to Bekker's τοῦ μὴ δοῦναι δίκην, which, if it stands, we must interpret with Seager, understanding ἕνεκα. I follow Schaefer also in the translation of τὸν οὐκ ὄντα, though I am doubtful whether it may not be equivalent to τὸν οὐ παρόντα.

which I myself can reap no profit, surely it ought to procure me favour with you, not to do me a mischief.

I know that he will urge this argument strongly—"Do not deliver me over to Demosthenes. Do not destroy me on account of Demosthenes. Because I am at variance with him, will you destroy me?" Such expressions I know he will use repeatedly, hoping by such language to excite a prejudice against me. This however is not the right view of the case, nor anything like it. You do not give up any offender to any accuser: even[1] where an individual has been wronged, you do not inflict punishment at the instance of the aggrieved party; but, on the contrary, you have enacted laws before the offences, when the parties who were to do or to suffer wrong were both unknown. What do these laws provide? They promise to all people in the state, that, if any man be wronged, they will afford him the means of redress. When therefore you punish any person who infringes the laws, you do not give him up to his accusers, but make the laws effectual for yourselves. With respect to his way of putting it, that "Demosthenes has been assaulted," my answer is just and equitable and fair for all. It was not to Demosthenes only that he offered an affront on that day, but to your choir-master; and what this imports, you may see by the following consideration. You know of course, that the Judges here have not any of them the name of Judge, but each some particular name. If a person assaults or abuses any of them in his private character, he will have an indictment for personal outrage brought against him, or a civil action for abusive language; if in the character of Judge, he will be completely disfranchised.[2] Why? Because the party so acting goes a

[1] This clause appeared to Reiske to be a mere repetition of the preceding one. I understand it however thus:—In no case do you inflict punishment merely to satisfy the vengeance of the accuser. Even where he does not prosecute purely on behalf of the public, but is himself the party immediately injured, you do not punish the offender in the manner that he desires, but as the laws have provided.

[2] Ἀτιμία, or disfranchisement, was a deprivation of civic rights either total or partial, perpetual or temporary. Certain crimes, which were regarded as heinous in themselves or highly injurious to the commonwealth, were punished with total and perpetual disfranchisement. Such were, among others, cowardice in battle, perjury, ill-treatment of parents, embezzlement of public money, bribery and corruption either political or judicial, and (as we learn from this passage of Demosthenes)

step further and insults the laws, your public crown, and the name of the commonwealth; for the Judge is not the name of any person, but belongs to the commonwealth. Just so again with the Archon: if any one strikes or abuses him with his crown on, he is disfranchised; if in his private character, he

assaulting a superior magistrate in the performance of his duty. Æschines, in the oration against Timarchus (pp. 3, 4), enumerates the privileges which might be forfeited. The chief of them were, the right to speak or vote in the popular assembly, to be a juror or a witness in courts of justice, to bring actions, to enter the precincts of the market-place, to visit the temples or take part in the public sacrifices, to hold magisterial and sacerdotal offices, to be sent as a herald or ambassador. The degraded citizen bequeathed his misfortune to his children; and it was exceedingly difficult to procure a release from it. The party himself could not petition for that purpose; for he was not permitted to open his lips in any court or assembly; and it was extremely hazardous for any other person to petition in his behalf. According to an ancient law, restitution of the franchise could only be obtained by the resolution of six thousand citizens voting by ballot. (See Demosthenes cont. Timocr. p. 715.) We read of occasions when the republic was in danger, when a general restitution of rights was granted by the people: but these were rare. (See Xenophon, Hellen. ii. c. 2, s. 11, and the second volume of this work, pp. 319, 393.)

The *Atimia* of persons indebted to the state was, as we have already seen (ante, p. 52), only temporary, and might at any time be put an end to by paying the debt. It was complete however as long as it lasted.

Partial disfranchisement took place when a man was deprived of particular rights for a time or otherwise by a special judgment or decree; and it was called ἀτιμία κατὰ πρόσταξιν. Thus, we are told, the soldiers who remained in the city during the interregnum of the four hundred in the Peloponnesian war, were deprived of the power to address the people, or to be members of the council. After the expulsion of the Thirty Tyrants, some persons were excluded from speaking in the assembly, some from being councillors, some from laying information, &c. But the common instance of partial disfranchisement was, where a man accused another of some crime and failed to prosecute the charge, or, having prosecuted, failed to obtain a fifth part of the votes, and was thereby disabled to bring a similar accusation in future. Æschines incurred this disgrace, when upon the prosecution of Ctesiphon he failed to obtain a fifth part of the votes, and became incapacitated in future to institute the γραφὴ παρανόμων. See what Demosthenes says in the Oration on the Crown, Vol. II. p. 98.

The term ἀτιμία was applied also to that species of outlawry, which wholly deprived a man of legal protection, so that he might be killed by any one with impunity. As to this, see the Third Philippic, p. 122, and Vol. I. p. 125 of this translation. On the whole subject the reader may consult Schömann, De Comitiis, p. 73; Antiquitates Juris publici Græcorum, p. 199.

is civilly responsible. And not only is this the law for the persons I have mentioned, but for all to whom the commonwealth gives special protection or the privilege of wearing a crown or any honour. And so with respect to me: if any of these wrongs had been done to me by Midias on any other days and in my private character, he should also have given me satisfaction privately; but if in every part of his offensive conduct he is shown to have insulted your choir-master on a festal day, he is deserving of public wrath and vengeance. For together with Demosthenes your choir-master was insulted; (that is a title belonging to the state;) and on those days too, when the laws forbid it. You ought, when you enact laws, to consider what their character is; but when you have enacted them, to maintain and put them in force. This is in conformity with your oaths, and it is equitable besides. There was the law of damage anciently; there was the law of battery,[1] and the law of outrage. If it had been sufficient for persons committing any of those offences at the Dionysia to be punished according to those laws, you would have had no need of this additional law. But it was not sufficient; evidently; for you passed a sacred law for the God himself concerning the feast-day. If any one then is amenable both to those pre-existing laws, and also to this that was subsequently passed and to all the rest, should he on such account have no punishment, or a more severe one rather? I should think, a more severe one.

Some one told me, that he was going about collecting cases, and inquiring what people had ever been assaulted, and that he intended to bring those cases forward, and give you the histories of them: for example, O Athenians, the Committee-

[1] Αἰκία, or battery, gave ground for a civil action, in which the plaintiff sought to recover damages for the injury which he had sustained in his person. The chief point of difference between this proceeding and the γραφὴ ὕβρεως was, that in the former the gist of complaint was the beating, in the latter it was the indignity. As under the Athenian law an indignity offered to a citizen was considered an offence against the state, therefore in the graver cases of assault a γραφὴ ὕβρεως might be maintained. In a δίκη αἰκίας the proceedings were before the forty itinerant judges. It was necessary, as in our own law in general, to prove that the defendant struck the first blow, and that he did it intentionally. The speech of Demosthenes against Conon was written for the plaintiff in an action of this kind. (See Meier and Schömann, Att. Proc. pp. 544, 547.)

man who once (they say) was struck in the assembly by Polyzelus; and the Judge[1] who lately was struck in rescuing the flute-girl; and instances of the like description: imagining that, if he can show many others to have suffered ill-usage, you will be less indignant at what I have suffered. I rather think, men of Athens, you ought to do the reverse, if you are to regard the public welfare. For which of you is ignorant, that such cases are numerous because offenders are not chastised, and the only means of preventing outrages in future is to see that every man who is caught suffers proper punishment? If then it is desirable to deter others, you should punish the defendant on account of those very cases, and the more severely, the more numerous and heinous they are; if he and all men are to be encouraged, you should let him off.

Again, we shall find the defendant has not the same title to indulgence which those men had. He that struck the Judge had three excuses, drunkenness, love, and ignorance; for it was done in the dark and at night-time. Polyzelus by anger and hasty temper, outrunning reflexion, was betrayed (as he said) into error:[2] certainly he was no enemy before, and had no intention to insult. Midias however has none of these things to allege: for he was an enemy, and insulted me knowingly in the day-time, and not only on this but on all occasions he is shown to have insulted me by design. Nor indeed do I see any resemblance between the conduct of the other parties and mine. The Judge, it will appear, took no thought, felt no resentment, for you or for the laws; but was tempted by a certain sum of money to compromise the cause on his own account. The party struck by Polyzelus did just the same; settled his quarrel in private, bade good-bye to you and the laws, and never brought Polyzelus into court. If any one then desires to accuse those persons on the present trial, he may bring these matters forward: but

[1] The Thesmothetes. Ulpian says, the Thesmothetæ used to walk round the city at night, to prevent robberies.

[2] According to Bekker's reading, ἁμαρτεῖν ἔφησεν, though I am inclined to prefer that which is adopted by Buttmann and Schaefer, ἁμαρτὼν ἔπαισεν. With the expression φθάσας τὸν λόγισμον compare Shakspeare, Macbeth, Act II. Scene 3,—

> The expedition of my violent love
> Outran the pauser reason.

if the object be to make a defence to my charge against Midias, these matters are the last that should be urged. For my conduct has been just the opposite of theirs: I, it will appear, have neither got nor attempted to get anything myself: my claim to satisfaction for the laws, for the God, and for you, I have honestly preserved, and have now handed over to you.

Don't suffer him then to bring forward such things: if he insists upon it, don't put faith in him as an honest reasoner. If this be your determination, he will not have a single word to say. For what pretence, what natural or tolerable excuse can be shown for his acts? Anger, I suppose: this perhaps he will say. I allow that, what a man suddenly without stopping to reflect is driven to do, even though he acts with insolence, he may fairly say he has done in anger: but what one is discovered to have been doing for some time past, continually, for many days together, in violation of the laws, surely, so far from his doing this in anger, it becomes clear that such a person has acted with premeditated insolence. Since it appears therefore that he has done what I accuse him of, and has done it to insult me, the next thing is to consider the laws, men of the jury: for according to them you are sworn to decide. And observe how much heavier wrath and punishment is due in their estimation to wilful and wanton trespassers, than to people offending in any other way. In the first place, all these laws concerning damage, (that I may begin with them,) if a man does a wilful injury, require him to pay double damages, if an involuntary one, single only: and with reason. For the injured party is in any case entitled to redress; but the injurer is not by the law pronounced equally culpable, whether he acts intentionally or unintentionally. Again, the laws of homicide punish wilful murderers with death and perpetual exile and confiscation of property, but to those who kill accidentally they extend compassion and mercy. And not only in these instances are the laws found to be severe to the perpetrators of malicious outrage, but in every instance. How comes it that, if a man does not satisfy a judgment, the law has not left the ejectment-suit[1] to be a private matter, but ordered

[1] The party entitled to execution was allowed to levy it himself by distraining the goods or entering upon the land of his adversary. If

the imposition of a fine to the treasury? And again, how comes it that, if a man gets from another by mutual consent either one talent or two talents or ten, and fraudulently keeps them, he has no affair with the state; but, if a man obtains a thing of small value, which he has forcibly taken from another,[1] the laws require a further penalty to be given, as much to the treasury as to the individual? Wherefore so? Because the legislator considered that all crimes committed with violence are common injuries, even to those not immediately concerned; for strength belongs to a few, but the laws to all, and one acting under persuasion requires only private redress, but one suffering violence requires public.

any one interfered and prevented him from obtaining the fruits of his judgment, he might bring an action against such person, whether it were the original adversary, or a pretended claimant of the property in question. Such action was called ἐξούλης δίκη, which, according to the literal interpretation of the words, signifies "action of ejectment;" and so therefore I translate it, although in our own law the term "ejectment" is used only in proceedings for the recovery of real property, whereas the Attic term is applied where either real or personal property was in dispute. If the plaintiff in this action was successful, the court adjudged that he should recover the property, and also imposed a fine upon the defendant, to punish him for impeding the process of the law.

The action brought by Demosthenes against Onetor is an example of this kind. Demosthenes, having recovered a judgment against Aphobus, proceeded to take his lands in execution. Onetor claimed them as mortgagee, and turned him off; whereupon Demosthenes, contending that the mortgage was a mere pretence to defraud him of his rights, commenced a δίκη ἐξούλης to try the question.

For further information on this subject, see Böckh's Public Economy of Athens, Transl. p. 106; Meier and Schömann, Att. Proc. pp. 486, 748. See also the following note, and Appendix IX.

[1] A man who forcibly took the property of another was liable to a δίκη βιαίων, "action of trespass," which was tried before the forty itinerant judges. It is in this distinguishable from the δίκη ἐξούλης, that it was maintainable only for trespasses to personal property, and where actual violence was committed; whereas in the δίκη ἐξούλης the force was generally a fiction of law. Doubtless there were cases where both of these actions could be maintained: as for example, where a party had taken a chattel in execution, and, after he had got it in his possession, it was retaken by force, a δίκη βιαίων might be brought for the actual violence, and a δίκη ἐξούλης for the impeding of lawful execution. On the other hand, if a defendant merely detained property which was liable to be distrained upon, a δίκη ἐξούλης might be brought, but not a δίκη βιαίων, for such detention was only violence in contemplation of law. (See Meier and Schömann, Att. Proc. p. 544.)

Therefore he gave the indictments even for personal outrage to any one that likes to prosecute, but the penalty he made entirely public: for he considered that the aggressor injured the state as well as the insulted party, and that the punishment was a sufficient compensation to the sufferer, and it was not meet that for such injuries he should get money for himself. And to such a length did he go, that, if an outrage be done even to a slave, he allows an indictment for it just the same: for he thought the question was, not, who is the sufferer, but what is the character of the action; and finding it to be unjustifiable, he forbade the thing to be done either to a slave or at all. For there is nothing, men of Athens, nothing in the world more intolerable than a personal outrage, or which you ought more deeply to resent. Take and read me the law concerning personal outrage. There is nothing like hearing the law itself.

THE LAW.

"If any one commit a personal outrage upon man, woman, or child, whether free-born or slave, or commit any illegal act against any such person, let any Athenian that chooses (not being under disability) indict him before the Judges; and let the Judges bring the case into the court of Heliæa in thirty days from the date of the indictment, if no public business prevent it, otherwise, as soon as possible. And whomsoever the court shall find guilty, let the court forthwith award him such penalty, either corporal or pecuniary, as he shall appear to deserve. But if any person preferring an indictment on his own account according to the law shall fail to prosecute, or having prosecuted shall not obtain a fifth part of the votes, let him pay a thousand drachms to the treasury. And if a fine be awarded for the outrage, let the party, in case of an outrage upon a freeman, be imprisoned until he has paid it."

You hear, O Athenians, the humanity of the law, which allows not even slaves to be insulted in their persons. By the Gods, let me ask—Suppose a man carried this law to the barbarians, from whom slaves are brought to Greece, and praising you and discoursing of Athens, addressed them thus —"There are certain people in Greece so mild and humane in their disposition, that, although they have suffered from

you many injuries, and enmity with you is their natural inheritance, they permit not even those whom they have paid a price for and purchased for slaves to be abused, but have passed this law of state to prevent it, and have punished many already with death for transgressing this law." If this were told and explained to the barbarians, would they not all with one voice (think ye) adopt you for their state-friends? He that transgresses such a law—not only esteemed among the Greeks, but which even the barbarians would admire—judge what punishment can be adequate to his deserts.

Had I not been choir-master, O Athenians, when Midias thus ill-used me, his crime would have been only a personal outrage: now, I conceive, he is properly chargeable with impiety. You are of course aware, that you appoint all these dances and hymns in honour of the God, not only by virtue of the laws concerning the Dionysia, but pursuant to the oracles, in all of which you will find a mandate to the commonwealth, as well from Delphi as from Dodona, to raise dances in the fashion of your country, to perfume the streets with sacrifice,[1] and to wear garlands. Take and read me the oracles themselves:

AN ORACLE FROM DELPHI.

Ye children of Erechtheus, who maintain
Your festive rites ancestral as of yore
In old Pandion's city, hear my words:
Remember Bacchus, on your highways broad
Requite the fruitful increase of the year
With choral rings[2] to Bromius, fat of beasts
Upon your altars burn, with garlands crown'd.

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[1] Κνισσᾷν ἀγυιάς. Pabst: *mit Opferdampf die Strassen zu erfüllen*—"To burn sacrifice for a sweet savour"—as we have so often in Leviticus. Shakspeare says in Titus Andronicus, Act I. Scene 2:—

And entrails feed the sacrificing fire,
Whose smoke, like incense, doth perfume the sky.

[2] Ἱστάναι ὡραίων χάριν is rightly interpreted by Buttmann to be a poetical expression for *χόρους ἱστάναι ὡραίων χάριν*. Pabst understands it differently, translating—

Früchte des Herbstes dem Bromios weihn zum lieblichen Danke.

On the subject of these dances Buttmann has the following note:—

"Quid commune est his choreis per vicos et plateas ducendis cum illis tibicinum aliisque choris de quibus in hac oratione Demosthenes? Idem, ni fallor, quod rei scenicæ Atticæ, quod tragœdis et comœdis posteriorum temporum, cum illo rurali ludicro quo per pagos discurre-

ANOTHER.

"For health sacrifice and pray to Jupiter the most high, to Hercules, to Apollo the protector:[1] for good fortune to Apollo the Street-god,[2] to Latona, to Diana: and in the streets set up the wine-bowl, form dances, and put on garlands according to ancient custom in honour of the Olympian Gods and Goddesses, lifting the right hand and the left, and forget not to offer gifts."

AN ORACLE FROM DODONA.

"To the people of Athens the priest of Jupiter gives notice: Since ye have let go by the seasons of sacrifice and holy embassy, he commands that ye send nine chosen deputies, and that they straight bring to Jupiter in Tomarus[3] three oxen, and with each two sheep, and to Dione[4] a cow and

bant peruncti fæcibus ora. Et ita omne ludorum genus rude, quod per festivam lætitiam licentiamque celebrabant homines cujusque civitatis ἄμμιγα πάντες, paulatim postea artibus excultis ad paucos cedebat, qui in quoque genere perfectiores, a ditioribus conducti publice certabant, populo actore olim nunc spectante. Oracula itaque illa, sive quod antiquioribus temporibus accepta essent, sive quod carminum divinorum auctores priscam adhuc simplicitatem præ oculis haberent, choros ab universo populo celebrandos imperabant; civitates autem, mutata nunc rerum facie, eorum loco certamina illa populo spectanda et audienda parabant."

[1] Προστατηρίῳ. "Quia patronus erat Athenarum."—Reiske. *Dem Beschirmer der Stadt.*—Pabst.

[2] "Before each house stood usually its own peculiar altar of Apollo Agyieus, or an obelisk rudely representing the God himself, a relic of the ancient τετράγωνος ἐργασία. Sometimes a laurel was planted beside it." Becker's Charicles, Transl. p. 260.

[3] The words τῷ ναρω are hopelessly corrupt; and therefore I adopt Buttmann's first conjectural emendation. Tomarus or Tmarus was a mountain near Dodona, on the slope of which there was a temple of Jupiter. Many years after, Buttmann himself suggested a new reading, τῷ Ναΐῳ, and amused himself with making some further changes in the text; *ingenio indulgens*, as Schaufer drily remarks. One of these is worthy of notice for its facetious character. He objects to the words διὰ ταχέων, as casting the reproach of greediness upon the father of the gods. Why (says he) should Jupiter be in such a hurry for his burnt-offerings? "Famelicus fuerit Jupiter, qui adventum pinguium horum boum, quorum nidore saturaretum opperiri vix posset." These words therefore are converted into something less disrespectful to the Olympian Sire. Another correction, by which οἷς is substituted for the barbarous βοήσεις, I have adopted with Pabst.

[4] Buttmann shows in his fourth Excursus, that Dione (a name derived from Διός) was the Juno of the Epirots.

other victims and a brazen table, and also the offering which the people of Athens hath dedicated."

ANOTHER.

"The priest of Jupiter gives command at Dodona: that to Bacchus the popular God[1] ye offer a victim without blemish, and mix the wine-cup and perform dances: that to Apollo averter of evil ye sacrifice an ox, and put on garlands, both freemen and slaves, and rest for one day: to Jupiter giver of wealth[2] a white bull."

These, O Athenians, and many other excellent oracles have been delivered to the commonwealth. What is there for you to remark in them? That, while they enjoin sacrifices to the Gods named in the several oracles, with every oracle that comes they invariably add, that you must raise dances and wear crowns in the fashion of your ancestors. It is plain therefore that the choruses which are formed and the choir-masters, during those days when we meet to contend according to the oracles, are crowned all of us on your behalf, as well the one that is to be victorious as the one destined to be last: but on the day of the prizes, and not before, the victor is crowned on his own account. Can a man who spitefully assaults any of these choristers or choir-masters, and that during the contest itself and in the temple of the God, be deemed guilty of anything else but impiety?

This you certainly know, that, for all your desire to have no alien among the performers, you give to no choir-master unqualified[3] permission to summon the choristers and examine them:

[1] Δημοτελεῖ. Pabst: *dem Volksbeschützer.* Buttmann reads δημοτελῆ, which I prefer.

[2] An image of Jupiter Ctesius was kept in the pantry of an Athenian house. See Taylor's note, citing an apposite passage of Isæus; and Callimachus, Hymn. i. 91,—

Χαῖρε μέγα Κρονίδη πανυπέρτατε δῶτορ ἐάων.

[3] It was unlawful for an alien to make one of the chorus, and if he did, he might be summoned before the magistrate and punished. But the law would not allow any proceedings to be taken against him during the time of the performance; for this would have caused an unseemly disturbance on an occasion of solemn festivity. In the words which occur just below, τὸν μὲν χορευτὴν οὐδ' ὁ προσκαλέσας κατὰ τὸν νόμον ἀζήμιος ἔσται, Ulpian, Taylor, and Auger, who are quite right in connecting κατὰ τὸν νόμον with προσκαλεσας, charge Demosthenes with arguing unfairly and captiously for the sake of rhetorical effect.

Auger puts the case thus:

"Ici

if he summons one, you require him to pay fifty drachms; if he orders one to sit down, a thousand. Wherefore so? That a person who is crowned and serving the God on that day may not be maliciously cited or harassed or insulted by any one. Then[1] shall a man who summons a chorister according to law be punished, and shall one who has beaten the choir-master himself thus openly in violation of all the laws escape with impunity? It is no use for the laws to be framed wisely and humanely for the people, if those who break and violate them feel not the resentment of you that are in power.[2]

Now pray consider another point: and let me beg you not to be offended with me, if I mention by name some persons who have been in misfortune: for, by Heaven, I have no wish in so doing to reproach any man with his shame, but to show how averse Athenians in general are to commit acts of violence and insult and the like.

There is one Sannio, as you are aware, who trains choruses for tragedy: he was convicted of shirking military service, and he has fallen into misfortune. After this mishap, some

"Ici le raisonnement de Démosthene est captieux. Il y avait deux lois; l'une qui autorisoit à citer devant le juge, avant qu'il parût sur le théâtre, ou après qu'il y avait paru, un étranger qui se mettoit parmi les personnages de chœur: le juge examinoit s'il étoit vraiment étranger; et après un examen suffisant, il le condamnoit à une amende: l'autre, qui défendoit de le citer lorsqu'il étoit sur le théâtre, en exercice, une couronne sur la tête. Démosthene, pour fortifier son raisonnement par une antithèse, mêle les deux lois au lieu de les distinguer. *Celui*, dit-il, *qui aura cité devant le juge un personnage de chœur, quoique autorisé par la loi, subira une peine.* S'il est autorisé par la loi, il ne subira pas de peine: s'il subit une peine, c'est qu'il n'étoit pas autorisé par la loi."

I agree with Schaefer that these critics are too severe upon our author. He is guilty of a slight inaccuracy for the sake of antithesis, but nothing more. The person who summoned an alien during the performance, summoned him according to the law in all other respects, but not in respect of the time; whereas the person who beat a choir-master violated the law in all respects.

[1] The collocation of these words in the original expresses what cannot be rendered in our language without some expansion—"Then shall a chorister be so protected, that even one who summons him according to law cannot escape punishment, while a choir-master is so unprotected, that even," &c.

[2] That is, "in power for the time being." Τῶν ἀεὶ κυρίων. Auger understands it differently: "Vous dont les sentences sont toujours sans appel."

ambitious choir-master of tragedians, Theosdotides, I believe, hired his services. At first the rival choir-masters were displeased and threatened to exclude him: however, when the theatre was filled, and they saw the crowd assembled to see the performance, they were afraid, they let him alone, no one touched him: such has been the pious forbearance displayed by all of you,[1] that ever since that he has been training choruses, and none even of his personal enemies prevents him. So far are they from laying hands upon a choir-master.

There is another person, Aristides of the Œneian tribe, who has met with a similar calamity. He is by this time an old man, and perhaps less of a chorister; but once he was leader and chief chorister of his tribe. You are of course aware that, if the leader be taken away, the rest of the chorus is gone. However, though many choir-masters have been full of emulation, none ever contemplated taking such an advantage, or dared to remove this man or stop his performance; for, as it was necessary for that purpose to lay hold of the party with the hand, and was not lawful to summon him before the Archon, as if one wished to remove an alien, every one was afraid to be seen perpetrating so gross an outrage. Is it not then shameful and atrocious, men of the jury—when choir-masters, who imagined they might conquer by such means, who have expended often all their substance upon the choral exhibitions, have never ventured even to touch what the laws allow, but are so cautious, so pious, so moderate, that, notwithstanding all their expenditure and anxiety, they restrain themselves and respect your wishes and your zeal for the festival—that Midias, a private individual, who has expended nothing, because he quarrelled with a man and was his enemy, should insult and strike him—a man spending his money in the choragic service and enjoying his full civic rights—and should pay no regard either to the festival or to the laws, or to what you would say, or to the God?

Many people have quarrelled, O Athenians, on public

[1] Literally, according to Bekker's reading: "Such a degree of piety (*τοσοῦτον τῆς εὐσεβείας*) may one see in each of you (*ἐν ἑκάστῳ τις ἂν ὑμῶν ἴδοι*) to have exercised forbearance (*συγκεχωρηκός*)." Most prefer Buttmann's reading, *τοσοῦτον τῆς εὐσεβείας—τὸ συγκεχωρηκός*, which makes a neater sentence undoubtedly. Pabst, apparently adopting Markland's reading, *τῇ εὐσεβείᾳ*, renders the passage: *eine solche Scheu vor dem Heiligen war bei Euch Allen in eurer Nachsicht bemerkbar.*

matters as well as private; yet no man ever reached such a pitch of impudence as to venture upon acts like these. They say that Iphicrates once became a bitter enemy of Diocles the Pitthean, and it happened that Tisias, the brother of Iphicrates, furnished a chorus to contend with Diocles: nevertheless, though Iphicrates had many friends and possessed a large property, and thought as highly of himself as might be expected of a man who had gained the honours and distinctions which you had bestowed upon him, he never went to the houses of goldsmiths by night, nor tore the dresses prepared for the festival, nor corrupted a trainer, nor prevented a chorus from taking lessons, nor did any of the things which Midias was so active about; but giving way to the laws and to the wish of his fellow-citizens, he was content to see his enemy gaining the prize and the crown. And with reason: he judged it proper to make such concessions to a state in which he knew that he had been prosperous. Again, we all know that Philostratus of Colonus accused Chabrias when he was tried for his life on the charge concerning Oropus,[1] and that of all his accusers he had been the bitterest, and that afterwards he furnished a chorus of boys at the Dionysia and won the prize, and that Chabrias neither struck him nor snatched away his crown, nor in any way intruded where he had no business. I could tell you of many more who have been enemies to one another on various accounts; but I have never seen or heard of one, who had reached such a pitch of insolence as to do anything like this: and I am sure none of you remember before (among all who have been enemies either on private or public grounds) any one standing by when the umpires were called, or dictating the oath while they were sworn,[2] or appearing at all as an enemy upon such an occasion.

Such things as these, O Athenians, if done by a choir-master under the influence of rivalry, are in some degree excusable: but to act thus for spite and annoyance, designedly and on all occasions, to show that a man's own power is superior to the laws—by Hercules! such conduct is odious, iniquitous, and against your interest. For if every choir-master could thus predict—"Let a particular person be my enemy, say Midias or any equally bold and rich,

[1] See Vol. II. p. 314. [2] See ante, p. 68, note 2.

I shall then be deprived of the victory, though I beat my competitors; I shall get the worst in every thing, and suffer continual affronts"—who is so wretched a simpleton, as to spend willingly a single drachm? No one surely. What makes men public-spirited and liberal with their money is this, I apprehend; that each believes he has his fair and equal share of rights in a democracy. I, O Athenians, failed to obtain such rights through the defendant; for, besides the insults which I sustained, I was robbed also of the prize. I can make it clear however to you all, that Midias, without doing anything rude, without offering an affront or striking a blow, had it in his power both to mortify me and show his own public spirit in a lawful manner, so as not to leave a word for me to say. When I, O Athenians, offered before the assembly to furnish a chorus for the Pandionian tribe, he should then have risen and offered to furnish a rival chorus for his own tribe, the Erechtheian: so, taking the same ground with myself, and spending his money in the same way, he should have disputed the prize with me, but not have insulted and beaten me as he did even then. Instead however of doing this, by which he would have honoured the people; instead of taking any such spirited course, he fell foul upon me; me, who in a fit of—whether you like to call it madness, O Athenians, (for madness perhaps it is to do anything beyond your strength,) or patriotism—undertook the office of choir-master: and so openly and brutally did he continue his persecutions, that at last he could not even keep his hands off my sacred robes or my chorus or my person.

If[1] there be any of you, O Athenians, whose wrath against Midias does not incline him to pass sentence of death, he takes not the proper view: for it is not right or just, that the forbearance of the sufferer should help to save a man

[1] Reiske and Spalding argue from the abrupt tone of the oration, that there is something lost or omitted here; and Buttmann will have it, that the words διὰ τὸ μηδὲν ἀνήκεστον γεγονέναι should be inserted after τεθνάναι. The speech very possibly never received the finishing touches of Demosthenes; but I agree with Schaefer, that we are not to criticise an orator by the strict rules of logical subtlety, from which, both in the general course of his arguments and in the mode of stating them, he frequently deviates. "Persæpe oratores ita argumentantur, ut medias notiones quas addi poscat dialectica subtilitas, auditoribus subaudiendas relinquant."

whose insolence was unbounded. The one you should punish as if he had gone to extremities; the other you should requite in avenging him.

It cannot be said that no dreadful consequence has ever resulted from such acts, and that I am magnifying the thing in speech and making it terrible. The case is very different. All, or at least many, know Euthynus, the young man that wrestled formerly, and took such a revenge on Sophilus the Pancratiast;[1] (he was a robust swarthy man; I am sure some of you know whom I mean:) on him at a party of pleasure quite private in Samos, because the striker thought to insult him, he avenged himself by taking his life. Many know that Euæon, the brother of Leodamas, killed Bœotus at a public supper and entertainment on account of a single blow. For it is not the blow that causes anger, but the disgrace: it is not the beating that is so grievous to freemen, grievous though it is, but the insult.[2] For the striker, O

[1] A prize-fighter, who both wrestled and boxed.

On the construction of this passage, which is somewhat obscure, owing partly to the insertion of the parenthesis, Buttmann has an Excursus. He omits the *καὶ* before *Σώφιλον*, in which Schaefer agrees with him. The sentence is thus assimilated in point of construction to the following; yet it is much less neat and clear; for in the last *ἀποκτείναντα* is placed immediately after the first accusative, whereas in the first the two accusatives come together and make confusion. Therefore I prefer to retain *καὶ* with Bekker.

[2] "Splendidus hic locus, certatim laudatur a veteribus, quorum satis erit memorâsse Quintil. vi. 1. 17, et Longin. c. 20. Hujus afferre juvat ingeniosam loci nostri commendationem, etsi alius generis ea est eloquentia quam Demosthenis: *Οὐδὲν ἄλλο διὰ τούτων* (verbis illis *τῷ σχήματι—ἐπὶ κόρρης*) *ὁ ῥήτωρ, ἢ ὅπερ ὁ τύπτων, ἐργάζεται· τὴν διάνοιαν τῶν δικαστῶν τῇ ἐπαλλήλῳ πλήττων φορᾷ.*" *Spalding.*

Auger observes: "Je les ai senties ces beautés, je m'en suis pénétré et j'ai tâché de les faire sentir dans ma traduction." Let us see how the worthy Abbé has acquitted himself:

"Ce n'est point le coup, mais l'affront qui excite la colère. Ce qui fait peine à un homme d'honneur, ce n'est point simplement d'être frappé, quoiqu'il y soit sensible, mais d'être frappé avec insulte. Celui qui donne un coup peut l'accompagner de circonstances que ne peut rendre celui qui le reçoit. Le geste, le regard, le ton d'un ennemi qui frappe pour outrager, qui frappe avec le poing, qui frappe sur la joue; voilà ce qui irrite, voilà ce qui met hors d'eux-mêmes des hommes qui ne sont pas accoutumés aux affronts. Il n'est pas possible, Athéniens, de presenter à ses auditeurs, dans un simple récit, une insulte outrageante, comme elle se montre en effet et dans la vérité à ceux qui la souffrent ou à ceux qui la voient."

Athenians, may do many things (some of which the sufferer cannot even describe to another) by his gesture, by his look, by his voice; when he strikes to insult, when as an enemy, when with his fist, when on the cheek. These things excite, these things put men beside themselves, when they are un used to indignities. No one, O Athenians, by a report can present the grievance so vividly to his hearers, as in truth and in fact the insult appears to the sufferer and the bystanders.

By Jupiter and the Gods! Only think, men of Athens, and consider among yourselves. how much more reason had I to be angry, when Midias so treated me, than Euæon who killed Bœotus had then. He was struck by an acquaintance, who was drunk, in the presence of six or seven persons, also acquaintances, who were sure afterwards to rebuke the one party for his conduct, and to commend the other for having been patient and restrained himself: and besides, he had gone to supper in a house where he was not obliged to go. I was insulted by an enemy, sober and in the morning, who did it purposely and not under the excitement of wine, in the presence of many persons both aliens and citizens, and that too in a temple, and where, being choir-master, I was compelled to go. And I think, men of Athens, I have been prudent, or rather fortunate, in having then restrained myself and not been led on to do anything fatal: though I look with great indulgence upon Euæon or any person who has defended himself from insult; and so, I think, did many who sat in judgment upon that case; for I am told he was convicted only by a single vote, although he neither shed tears nor petitioned any of the jurors, nor did any act, great or small, to conciliate the panel. Let me assume, that the adverse voters condemned him not because he retaliated, but because he went so far as to take life; while those who acquitted him had allowed even this excess of vengeance to a man outraged in his person. How say you then? I, that never retaliated at all—so careful have I been to prevent anything fatal occurring—from whom should I obtain redress for my injuries? From you, I conceive, and from the laws: and other people should be warned by example, that one is not to revenge oneself in a passion upon bullies and blackguards, but to bring them before you, and you will

maintain and enforce the remedies provided by law for the injured against their oppressors.

Some of you, I dare say, men of the jury, expect to hear what was the quarrel existing between us; for you must imagine that no person could treat a fellow-citizen with such brutal violence without some strong provocation. I will give you then a full explanation of it from the beginning, to convince you that even for what then occurred he deserves most clearly to be punished. The tale will be brief, though I may appear to begin far back.

When I brought actions against my guardians for my paternal inheritance, being quite a stripling, ignorant even of this man's existence, and having no knowledge of him, (would I had not any now!), when the cause was coming on to be tried in about three or four days, he and his brother rushed into my house, and tendered me the trierarchy.[1] It was the brother who gave his name and made the tender, Thrasylochus; but all the acts and proceedings were by Midias. And first they broke open the doors of the apartments, as if they became theirs at once by the exchange: then in the presence of my sister, who was still in the house and was a young maiden, they uttered obscene language, such as only people like them would utter;[2] (for I could not be induced to repeat to you any of the words then spoken;) and on my mother and me and all of us they poured every possible kind of abuse. But the most shameful part of all—beyond mere words—was this: they gave my guardians a release of the actions, as if they belonged to them. Old matters are these certainly, yet I think some of you remember them; for the whole city at the time heard of the exchange, and the plot which they laid, and their brutal behaviour. I being then quite friendless and very young, that I might not be deprived

[1] See the second Oration against Aphobus, 840, 841.

The trierarchy was at this time shared between two persons. Thrasylochus was joined with one Philinus, whose colleague Demosthenes became, when he accepted the office instead of the exchange of estates. See pp. 564, 566; and on the general subject of the trierarchy, see Vol. I. Appendix V.

[2] Becker in his Charicles, noticing this passage, observes that, although offensive language before females was deemed highly reprehensible among the Athenians, this was owing less to a proper moral feeling than to motives of respect for the *κύριος* or guardian. (Transl. p. 472.)

of the property in the hands of my guardians, expecting to recover not merely what I actually obtained, but all that I knew I had been deprived of, gave to these men twenty minas, the sum for which they had provided a deputy trierarch.

Such is the foul usage which I then received from these men. Having afterwards brought an action against Midias for abusive language,[1] I obtained judgment by default; for he did not appear. The judgment was not paid, and I became entitled to execution;[2] yet I never touched any of his effects, but again brought an action of ejectment, and down to the present day I have not been able to try it: such tricks and pretences does he find to baffle me with. And whilst I deem it my duty to do everything cautiously and by process of law and justice, the defendant, as you hear, thought proper to offer shameful affronts, not only to me and mine, but to my fellow-tribesmen on my account. Call me the witnesses to prove the truth of these statements, to show you that, before I have obtained satisfaction for my former wrongs, I have again suffered the outrages which you have heard.

WITNESSES.

"We, Callisthenes of Sphettus, Diognetus of Thoricus, Mnesitheus of Alopece, know that Demosthenes, for whom we are

[1] This is not to be confounded with our action of slander, which is founded upon the damage done to a man's character by saying injurious things of him to third persons. The Athenian action for abusive language was irrespective of such damage, and regarded only the insult offered to the plaintiff himself. At Athens, as with us, there were certain words made specially actionable by law, such as *ἀνδροφόνος*, *ῥίψασπις*, *πατραλοίας*, and doubtless many others. Lysias, in the speech which he wrote for the plaintiff against Theomnestus (the only example we have of a speech in a *δίκη κακηγορίας*), makes him say that he considered this kind of action illiberal and litigious (*ἀνελεύθερον καὶ φιλόδικον*). The truth of the words spoken seems to have been a good plea to the action. Five hundred drachms were the damages given by law to the plaintiff, if he succeeded. Demosthenes, as it appears, obtained a judgment for a thousand (see p. 543); but he may have been entitled to double damages in respect of the abuse of his mother.

(See Meier and Schömann, Att. Proc. 481.)

[2] A judgment-debtor was said to be *ὑπερήμερος*, if he did not pay the judgment on the appointed day. *Λαβὼν ὑπερήμερον καὶ ἔχων* means, "I caught and had him in default, the judgment being overdue;" as lawyers would say in pleading, "I became and was entitled to execution." Buttmann rightly explains it in his note.

witnesses, has brought an action of ejectment against Midias, who is now publicly prosecuted by him, and that eight years have already elapsed since that action was commenced, and that Midias has been the cause of all the delay by continually making excuses and postponing the cause."

Let me tell you, men of Athens, what a base thing he has done in the affair of the suit; and mark his insolent and overbearing behaviour on every occasion. In the suit—I mean that in which I obtained judgment against him—I got for arbitrator[1] Straton of Phalerum, a man of humble means and no lawyer,[2] but of unexceptionable character and thoroughly honest; which indeed not properly or justly, but most shamefully, has been the ruin of the poor fellow. This Straton, acting in the arbitration for us, when the day of hearing had at last come, and all the tricks of the law, affidavits and pleas,[3] had been gone through, and nothing further remained, at first requested me to defer the arbitration, then to adjourn it till the following day; at length, as I would not consent, and the defendant did not appear, and it was getting late, he made an award against him. In the evening after dusk Midias the defendant comes to the office of the Archons,[4] and finds the Archons going out, and Straton just going away after giving the judgment by default, as I learned from one of the persons present. At first he actually pressed Straton to return the award which he had given against him as an award in his favour, and the Archons to alter the record; and he offered them fifty drachms: finding that they resented the thing, and that neither of the parties could be prevailed upon, after threatening and abusing them, he goes away, and does what?—Only observe his malignity! Having moved for a new trial, he never took the oath, but allowed the award to become absolute against him, and was returned as unsworn.[5] Wishing his design to remain a secret, he

[1] See Appendix X.

[2] Ἀπράγμων. Spalding: "forensium rerum rudis." Pabst: *wenig gewandter Mann.* Auger: "ni au fait des affaires."

[3] These and all the rest of the proceedings in an Athenian lawsuit are explained in Appendix IX.

[4] The Thesmothetæ.

[5] Midias moved the Arbitrator to set aside the judgment, and grant him a new trial (τὴν μὲν δίαιταν ἀντιλαχών), and obtained, as we should say, "a rule to show cause why, &c." This was granted conditionally,

waited for the last day of the arbitrators, which falls in Thargelion or Scirophorion,[1] on which some of the arbitrators come and some do not, and having persuaded the chairman to put the vote contrary to all the laws, without superscribing the name of any witness to the summons, laying a charge in the defendant's absence, no one appearing, he disfranchises and outlaws the arbitrator. And now an Athenian citizen, because Midias suffered a judgment by default, has been deprived of all his civic rights and been completely disfranchised: and it is not safe, as it appears, either to bring an action against Midias for an injury, or to be an arbitrator for him, or even to walk on the same road.

You must look therefore at the matter thus, and consider what brutal injury Midias sustained, that he should contrive to take so great a revenge upon a fellow-countryman: and if it

subject to his putting in an affidavit, alleging a sufficient excuse for his absence, and to his satisfying the Arbitrator, on cause being shown by the plaintiff, that he ought to have the cause re-heard. He failed however to put in an affidavit within the time allowed by law, and thus the motion fell to the ground. A return was made by Straton to the Thesmothetæ, showing these facts, and the judgment against Midias was duly entered of record and became irreversible.

See Meier and Schömann, Att. Proc. p. 756, &c., and Appendices IX. and X. in this volume.

[1] The last day of the month was called *the old and new* (ἔνη καὶ νέα), because it was the last of the old moon and the first of the new; for the new moon was frequently visible on that day, although the following day, the first of the next month, was the legal νουμηνία. It seems the vulgar expression ἔνη καὶ νέα led ignorant people into mistakes, causing them to imagine that there was an uncertainty as to the month which that day belonged to. Some might be really misled; others would make it an excuse for not attending to business. Straton was unlucky or silly enough to commit this blunder, and did not attend, as he should have done, at the office of the Logistæ on the thirtieth day of Thargelion. The law was perfectly clear: the vulgar error, whatever Demosthenes might choose to say, could furnish no excuse to the Arbitrator: and accordingly Midias, appearing to accuse him of official misconduct, procured his condemnation. Demosthenes objects, that he ought to have summoned Straton; but this was probably unnecessary, inasmuch as he was bound to attend, to answer any complaints that might be preferred against him. I take it that Midias had the strict letter of the law on his side, but enforced it with undue rigour.

Τὸν πρυτανεύοντα is the President or Chairman of the Logistæ. See Meier and Schömann, Att. Proc p. 215. As to ἔνη καὶ νέα, see Buttmann's sixth Excursus · and on the law of the Arbitrators, Appendix X.

be something really frightful and monstrous, you should forgive him; but if nothing of the sort, mark the insolence and brutality with which he behaves to all who encounter him. What is it then that he has suffered? A heavy judgment was given against him perhaps, heavy enough to ruin him. Why, the judgment was only for a thousand drachms. Very good; but even this is vexing, you will say, when you have to pay unjustly; and in fact he let the day of payment slip inadvertently, because injustice was done him. Nay, he discovered it the very same day, (which is the strongest proof of the man's having done him no injustice,) and he has not yet paid a single drachm: but of this by and by. Surely however he might have got a new trial, and made it an affair with me, his original adversary. He did not choose this; but rather than Midias should defend an action for the liquidated damages of ten minas, (an action to which he did not appear as he ought,) rather than he should give satisfaction if he had done wrong, or otherwise get the verdict, an Athenian citizen must be disfranchised, and obtain neither pity nor hearing nor mercy, things which even real wrongdoers are entitled to.

However, as he had disfranchised the person he wished, and you had so far gratified him, and he had glutted the savage feeling which prompts him to take these courses, at least he did this—he has paid the damages, on account of which he ruined the man. No; not a copper coin to this day: he submits rather to be defendant in a suit of ejectment. So Straton has been disfranchised and ruined in my quarrel:[1] Midias has suffered nothing at all, but turns upside down the laws, the arbitrators, everything that he pleases. And the judgment against the arbitrator, which he contrived to get without a summons, he has made valid for himself: that which I recovered against him with his full knowledge,

[1] Παραπόλωλε. Neither Buttmann's "immerenter," nor Reiske's "velut per jocum aut oscitantiam et socordiam judicum pessumdatus," expresses the true force of παρά. Schaefer, referring to the Oration on the Embassy, p. 396, gives us a right notion of the meaning: "Dicit orator Stratonem Midiæ πάρεργον factum esse." But it is more difficult to translate than to write a note about it. We might say in English, "The ruin of Straton has been a little episode [or interlude] in our quarrel." Pabst shirks the preposition altogether. Auger: "il a péri victime de nos débats."

after summons and default, he nullifies. Yet if Midias must thus be revenged on people that give awards against him for non-appearance, how should you avenge yourselves on him, who thus openly breaks your laws in insolent defiance? If disfranchisement, if exclusion from law and justice and every thing, is a meet penalty for the former offence, death would appear to be a slight penalty for a brutal outrage.[1]

To prove my statements, call me the witnesses, and read the law of the arbitrators.

WITNESSES.

"We, Nicostratus of Myrrhinus, Phanias of Aphidna, know that Demosthenes, for whom we are witnesses, and Midias, the party prosecuted by Demosthenes, when Demosthenes brought against him the action for abusive language, chose Straton for an arbitrator, and that, when the day appointed by law arrived, Midias did not attend the arbitration, but absented himself. And judgment having been given against Midias by default, we know that Midias urged both Straton the arbitrator and us, who were Archons at that time, to declare the award in his favour, and that he offered us fifty drachms; and when we would not listen to his offer, he threatened us and went away. And we know that on this account Straton was circumvented[2] by Midias and disfranchised against right and justice."

Now read the law concerning the arbitrators.[3]

[1] Here, as in other places, we perceive the difficulty of translating the word *ὕβρις*. The offence punishable by the *γραφὴ ὕβρεως* received that name, because the gist of it was the insult offered to an Athenian citizen, and through him to the state. Therefore in the two clauses before us the orator can use this word with a double application. We cannot preserve this in English. It would sound strangely to speak of "an indictment for an insult or insolence."

[2] Καταβραβεύειν, a word of rare occurrence, is interpreted by Stephen, "debito brabio fraudare." In St. Paul's Epistle to the Colossians, ii. 18, *μηδεὶς ὑμᾶς καταβραβευέτω* is rendered in the vulgate, "let no man deprive you of your reward." Buttmann observes in his Index: "Si locum Apostoli inspicias, videas verbum usurpatum de iis qui falsâ sanctitate verè religiosos vincere student; si nostrum, de Midiæ technis illis. Ut non levis sit suspicio, verbum in translato sensu aliter usurpari non potuisse quam de eo qui debitam alteri victoriam eripit." Reiske in his Index gives the metaphorical sense of the word as I have rendered it. Pabst: *durch böse Künste zu Grunde gerichtet.* Auger: "qu'il a manœuvré contre lui."

[3] Ulpian says the object of Demosthenes in reading the law was, to

THE LAW.

"If any persons have a dispute with each other concerning private contracts, and wish to choose any one for arbitrator, let it be lawful for them to choose what arbitrator they please; and when they have chosen one by agreement, let them abide by his decision, and not carry the same cause from him to another tribunal, but let the award of the arbitrator be final."

Now call me Straton himself, who has undergone this misfortune. I suppose he will be allowed to stand. There he is O Athenians; a poor man perhaps, but not a bad one; a citizen, who has served in every campaign during his age of service, and committed no crime; yet there he stands in silence, deprived not only of all other common privileges, but of the power to speak and to complain: and it is not lawful for him even to tell you whether he has been treated justly or unjustly. And such treatment he has suffered from Midias, from the wealth and insolence of Midias, because he is poor and without friends and one of the many. And had he accepted the fifty drachms from him in contempt of the laws, and declared the award which he pronounced against him to be in his favour, he would have been in possession of his franchise, free from all harm, and sharing equal privileges with the rest of us: but since he regarded Midias less than justice, and feared the laws more than his threats, he has fallen into the dreadful calamity which you see by this person's contrivance.

And will you let a man so cruel, so unfeeling—who takes such vengeance for injuries which he himself only says he has sustained, for he never had sustained any—will you let him escape, when you have caught him inflicting an outrage on a fellow-citizen? And if he pays no regard either to the festival or to religion or anything else, won't you convict him?—won't you make him an example? And what will

show that Straton's judgment was legal. As this does not appear from the law in the text, it has been thought either to be spurious, or an imperfect copy. Certainly the mere fact of there being no appeal from the arbitrator's decision would not render it more criminal in Midias to revenge himself as he did; for, if the decision was wrong, the injury done to Midias was increased by the award being final.

you say, men of the jury? In Heaven's name, what fair or honourable excuse will you have to allege? Peradventure, that he is an odious blackguard; for that is the truth. But surely, O Athenians, you ought to detest such people rather than to pardon them. Or because he is rich? But this you will find is pretty much the cause of his insolence: therefore you should rather take away the means which enable him to be insolent, than pardon him in consideration of them. To allow an audacious blackguard like him to have wealth at his command, is to have put arms in his hands against yourselves.

What then remains? To pity him, I suppose. He will have his children[1] by him and weep, and beg for mercy on their account: that resource is left him. But you are surely aware, that pity is due to men who suffer something unjustly which they cannot bear, not to men who are punished for their crimes. And who can justly pity the defendant's children, seeing that he pitied not the children of this man, who (besides other causes of distress) see no possible remedy for their father's calamity; for there is no debt by paying which this man can recover his position: he is just absolutely disfranchised by the fury and ruffianism of Midias. Who then shall cease to be a ruffian—who shall be deprived of the wealth, which makes him such—if you pity the defendant as an ill-used person? And if a poor man, without having done any wrong, has fallen into the deepest misfortunes by the iniquity of the defendant, will you refuse even to share his resentment? Heaven forbid! No one deserves to obtain mercy, who is never merciful; or forgiveness, who is unforgiving. I consider indeed, that all men in all they do determine to

[1] Compare Cicero, Brutus, 23:

"Tum igitur nihil recusans Galba pro sese, et populi Romani fidem implorans, cùm suos pueros tum Caii Galli etiam filium flens commendabat; cujus orbitas et fletus mirè miserabilis fuit propter recentem memoriam clarissimi patris: isque se tum eripuit flammâ, propter pueros misericordiâ populi commotâ."

And Orator, 38:

"Nec vero miseratione solum mens judicum permovenda est (quâ nos ita dolenter uti solemus, ut puerum infantem in manibus perorantes tenuerimus: ut aliâ in causâ, excitato reo nobili, sublato etiam filio parvo, plangore et lamentatione complerimus forum); sed etiam est faciendum, ut irascatur judex, mitigetur, invideat, faveat, contemnat, admiretur, oderit, diligat, cupiat," &c.

pay a subscription [1] to their life-account; not that only which there are people to collect and make up, but another also For example: here am I, a person civil to all, compassionate, doing good to many: the like should such a person's dole be from all, if ever need or occasion arise. Here is another, violent and unrelenting, scarce regarding his neighbours as human beings: he deserves from every one to receive the like payment. You then, having paid up such a subscription, deserve to collect the same for yourself.

I conceive therefore, O Athenians, that even if I had nothing further to charge Midias with, if what I am about to mention were not more dreadful than what I have stated, you would be justified by those statements both in convicting him and in passing the severest sentence. The case however stops not here, nor shall I have any difficulty in carrying it further; such ample matter of accusation has he provided. His getting up an indictment against me for desertion of post, and his hiring an agent for the purpose, that rascal of all work,[2] that ragamuffin [3] Euctemon, I shall pass by; for the scoundrel never brought it to a hearing before the magistrate, and Midias only hired him that it might be placarded

[1] The illustration is drawn from the practice of the Athenian clubs, in which the members subscribed money for the relief of their needy associates. Whoever gave a liberal subscription, might look for the same kindness to be shown to himself, if ever he should stand in need of it. As it is in a club, so is it in life, says the orator: what a man does to others, they will and should do to him in return. With a similar allusion, he says in the Oration against Neæra, p. 1348, *τούτῳ τὸν αὐτὸν ἔρανον ἐνεχειρήσαμεν ἀποδοῦναι,* "to pay him in his own coin." *Ἔρανος* signifies both the club and the club money. *Συλλέγειν ἐράνους* is "to collect the subscriptions;" *πληροῦν,* "to pay them." A brief account of the clubs is given in Appendix XI.

As the same sentiment is again expressed, and partly in the same words, at page 574, one of the passages must have been interpolated, or the author's manuscript left imperfect.

[2] *Εὐχερῆ.* Buttmann: "homo levissimus." Pabst, more correctly: *zu Nichtswürdigkeiten bereitwilligen.* Auger: "ce scélérat complaisant."

[3] *Κονιορτός.* Properly "a cloud of dust," is used metaphorically to signify a dirty fellow—dirty in habits, appearance, or conduct. The word *συρφετὸς* is used in a similar way. Buttmann cites the following lines from Athenæus:

Λιπαρὸς περιπατεῖ Δημοκλῆς· ζωμὸς κατωνόμασται·
Χαίρει τις αὐχμῶν ἢ ῥυπῶν· κονιορτὸς ἀναπέφηνεν·
Ὄπισθεν ἀκολουθεῖ κόλαξ τῳ· λέμβος ἐπικέκληται.

before the statues, and all might see—"Euctemon of Lusia has indicted Demosthenes of Pæania for desertion of post;" and methinks, he would have added with pleasure, if it had been possible, that he had indicted on the hiring of Midias. But this I pass by; for, as he has disfranchised himself by not prosecuting the charge, I need no further satisfaction for it; I have sufficient already. But one shocking and cruel thing that he has done, O Athenians, a crime, as it appears to me, not only against the state, but against our common religion, I will tell you. When that poor unfortunate man, Aristarchus,[1] the son of Moschus, had a foul and grievous charge hanging over him, at first, O Athenians, he went about the market-place, and dared to spread atrocious and impious reports about me, that I had done the deed; but as he got nothing by that, he went to the relations of the deceased, who were bringing the charge of murder against Aristarchus, and promised to give them money, if they would accuse me of the crime. And neither gods nor sanctity nor anything else stood in the way of his making this proposal: he never hesitated: he was not ashamed to look those he addressed in the face, while fastening on a man this horrible calumny: having but one object in view, to destroy me by every possible means, he would leave no stone unturned, as if it were right that any person who has been insulted by Midias, and determines to obtain redress instead of holding his tongue, should be utterly exterminated and not allowed to rest, should even stand convicted of desertion of post, and be exiled on a charge of murder, and all but crucified.

When he is convicted of all this, in addition to the insults offered me as choir-master, what pardon or what pity is he entitled to at your hands? For my part, O Athenians, I consider he has been my murderer by these acts: on that

[1] This Aristarchus was charged with the murder of Nicodemus, a friend of Eubulus, according to Ulpian, who says that Demosthenes on that account was suspected of having instigated the murder. Æschines insinuates nearly as much in the Oration against Timarchus, p. 24, where he imputes to his rival an infamous connexion with Aristarchus. The story in Athenæus (xiii. 592), taken seemingly from Idomeneus, repeats the calumny of Midias, that Demosthenes was the actual murderer. Aristarchus however was believed to be guilty, and fled from Athens. It is remarked by Ulpian, that Demosthenes, having been his friend, avoids all expression of opinion as to his guilt or innocence

occasion at the Dionysia he insulted my apparel, my person, my decorations; but by his doings and proceedings here he assailed them and everything else, my citizenship, my family, my privileges, my hopes; for, had he succeeded in any one part of his machinations, I should have been deprived of all—aye, and I should not have been buried even in my native land. Why so, men of the jury? Because, if any one that suffers lawless outrage from Midias is to be treated as I have been, when he seeks to obtain redress, it will be better, as they do among the barbarians, to kiss the ground before those that strike you, not to defend yourself.

To prove my statements—to show that this impudent scoundrel has added these to his other performances—call me the witnesses.

WITNESSES.

"We, Dionysius of Aphidna, Antiphilus of Pæania, when our relative Nicodemus had come to a violent death by the hand of Aristarchus, the son of Moschus, took proceedings against Aristarchus for the murder. Midias, the party now prosecuted by Demosthenes for whom we are witnesses, having heard of this, tried to persuade us, by offering small pieces of money, to discharge Aristarchus, and to insert Demosthenes in the indictment for the murder."[1]

[1] Παραγράψασθαι. Buttmann, following Reiske, thinks that the preposition conveys the idea of *wrong* or *fraud*, as in παραπρεσβεύειν, and that γράψασθαι has the meaning of *to indict* or *accuse*. In my judgment παρὰ signifies *insertion* only, and Δημοσθένει τὴν γραφὴν παραγράψασθαι is "to amend the indictment by inserting the name of Demosthenes," or more literally, "to have a charge inserted in the indictment against Demosthenes,"—γράψασθαι signifying "to cause to be written," and Δημοσθένει being what grammarians call the *dativus incommodi*. As the various uses of παρὰ are apt to puzzle the student, it may not be amiss if we stop for a moment to consider them.

The original meaning of παρὰ, to which all its uses are referable, is *alongside of;* as in παρὰ ποταμόν, παράλληλος. That which is by the side of a thing is close or near to it: and hence we get the sense of *by, with, among;* as in πάρειμι, παραγίγνομαι, &c. Metaphorically, one thing is said to *go along with* another, if it is a consequence of it: and hence παρὰ comes to signify *by means, on account, in consequence of;* as παρὰ τοῦτο γενέσθαι. As things are placed by the side of each other in order to be compared, παρὰ naturally enough signifies *in comparison with.* Again, transferring the idea of proximity and connexion from place to time, it becomes *throughout* or *during;* as παρὰ πᾶσαν τὴν χορηγίαν. The foregoing uses are manifestly all modifications of the same idea. Others,

Now please to take the law concerning bribes.

Whilst he is finding the law, men of Athens, I wish to say a few words to you; and by Jupiter and the Gods, men of the

Others, which appear at first to be inconsistent, are obtained by a different application of the primary meaning. Thus, a thing which is by the side of another does not coincide with it: two parallel lines, however near, cannot meet. Hence we get the idea of difference or nonconformity, and παρὰ is used for *aside, contrary to, beyond;* as in παρὰ νόμον, παρὰ λόγον, παράδοξος, παραβαίνω, παρίημι, *I put aside* or *omit*, παροράω, *I look on one side, avoid seeing, overlook*, &c., παραπρεσβεύω, *I act contrary to my instructions as ambassador.* The same sort of double aspect is found in our own word *beside.* Thus we say, *I sit beside him;* and also, *beside the mark, beside the argument.* The sense of *but for* is got from the notion of setting aside; as παρ' ὀλίγας ψήφους ἠτιμώσατε, *but for a few votes you had disfranchised him; without* [or *setting aside*] *a few which gave a majority for acquittal, he was condemned.* Παρὰ with a genitive signifies *from the side of, from off;* as παῖς παρὰ πατρὸς λαμβάνει χρήματα, or ἀρχήν, indicating the quarter from which the property or title is derived, without any idea of loss to the party giving, as in ἀπολαμβάνω. Between ἀφαιρεῖσθαι and παραιρεῖσθαι there is this distinction: ἀφαιρεῖσθαι is, *to take right away;* παραιρεῖσθαι, *to detach, to draw off.* Thus, τὴν ἐκείνων συμμαχίαν παραιρούμενος (Or. ad Epist. 153): Philip was *drawing over to himself* the allies of the Thebans —not directly taking them away, but indirectly and gradually—*filching their confederacy.*

Now let us come to παραγράφειν. This, according to the first idea of παρὰ, signifies *to write by the side;* as if you add something in the margin of a book, or set one page or column opposite another. Hence παραγεγραμμένοι νόμοι. (See the explanation, Vol. II. p. 46; and this Volume, p. 34.) A *plea* was called παραγραφή, because it was entered, or at least produced in court, with the plaintiff's declaration, so that both could be viewed together. Anything inserted in a document may be said παραγράφεσθαι. And as this is sometimes done fraudulently, for example, when a name or a clause is forged in a will or a register, the idea of fraud is in such case attached to the word itself: hence παρεγγραπτὸς πολίτης. In our own language we may say—"Such a clause was inserted in the will"—with an opprobrious signification, meaning that it was put in clandestinely, or not by the testator. But we must observe, there is no notion of fraud contained in παρά, unconnected with the verb. Unless therefore the act of insertion itself constitutes a fraud, nothing criminal is imputed by the word παραγράφειν. And this is precisely the case here. If Midias had prevailed on the relations of Nicodemus to accuse Demosthenes of murder, they would have been guilty of a heinous conspiracy undoubtedly; but the manual act of altering the indictment would in no way have increased their crime; it would have been a mere formality without anything clandestine or irregular in it. The verb is used here in the same way as in the Oration against Bœotus, p. 1003 πατρὸς ἄλλου σεαυτὸν παραγράφειν, "to enter yourself in the register of the Phratria as the son of another

jury, I entreat that in every part of the case you will put to yourselves this question—What would any one of you have done, had he been so treated?—what anger would he have felt on his own account against the party using him so? For my part, grieved as I have been at the insults offered me during my public service, I have been still more grieved, men of Athens, and felt deeper indignation at what followed. For really where do you think wickedness will end? or how can impudence, insolence, and brutality be exceeded, when a man, after doing dreadful things—yes, by heaven, and heaping injuries upon me!—instead of repenting and making amends, proceeds to commit far greater atrocities, and employs his wealth, not so as to promote his own private interest without hurting another, but for the opposite purpose, that he may degrade and insult his neighbour, and then felicitate himself upon his opulence? Such, men of Athens, have been the practices of Midias against myself. He accused me falsely of a murder, with which I was in no way concerned, as the event proved; he indicted me for desertion of post, having himself deserted his post thrice; and the troubles in Eubœa, which were caused by his friend Plutarch—(I had nearly forgotten this)—he attempted to lay them to my charge, before it became evident to all that the thing had been contrived by Plutarch. And lastly, when the lot had fallen on me to be councillor, he accused me on my probation; and the thing came to a terrible pass for me: for, instead of obtaining satisfaction for my wrongs, I was in danger of being punished for things with which I had no concern. And thus ill-used as I am, persecuted in the manner that I describe to you, though not a person wholly friendless or without means, I know not, O Athenians, what course to take. For—if I may say a word upon such topics now—the bulk of us,

father:" for which purpose the father's name then standing in the register would have been erased, and the new one inserted; as here the name of Aristarchus would perhaps have been expunged from the indictment, and that of Demosthenes substituted. The erasure and insertion might both have been expressed by the verb μεταγράφειν, but this was unnecessary.

I will only add, that the sentence is not improved by Reiske's interpretation. No vituperative epithet is required, when the facts constituting the crime have been already stated, and the previous clause, τὸν μὲν Ἀρίσταρχον ἀθῷον ἀφεῖναι, having no such epithet, the antithesis is more perfect, if the latter clause has none.

O Athenians, have no share of common or equal rights, like the wealthy; we have not indeed. They have what time they please allowed them for answering complaints, and their offences come before you stale and cold; whereas, if anything happen to one of us, he is tried fresh after the act. And there are witnesses ready for them, and advocates all prepared against us; but for me, as you perceive, some persons are unwilling even to give evidence of the truth. One may almost give it up in despair.[1] Read me the law next, as I desired. Read.

THE LAW.

"If any Athenian receive a bribe, or himself give one to another, or corrupt any person by a promise, in order to injure the people, or do private damage to a citizen, by any means or device whatsoever, let him be disfranchised, himself and his children, and let all that he has be confiscated."[2]

To show you what a wicked wretch he is—that he would submit to say or do anything, without making any distinction whether it were true or false, whether to an enemy or a friend, or the like—after accusing me of murder, after laying such a crime to my charge, he suffered me to officiate for the council in their sessional[3] worship and sacrifice, and to pluck the hairs of the victims on behalf of you and the commonwealth: he suffered me to be at the head of the religious embassy sent in the name of the commonwealth to Nemean Jupiter: he made no objection when, out of all the Athenians, I with two colleagues was chosen to offer sacrifice to the awful Goddesses,[4] and when I laid my hand upon the victims. Think ye, if he had a tittle or a shadow of evidence to prove the charges that he made up against me, he would have allowed all this? I should conceive not. Well then; it is clear proof, that he sought from spiteful motives to drive me from my country.

[1] Literally: "with a groan." Not, "quamvis mœrens," as Schaefer interprets it; though I agree with him in preferring ἀπείποι to εἴποι. Auger, who adopts the latter reading, renders it: "Peut-on parler de ces abus sans gémir?"

[2] "Videtur deesse δημόσια."—*Schaefer*. Or perhaps it may be understood from ἄτιμος. Auger however renders τὰ ἐκείνου, "toute sa famille."

[3] As to εἰσιτήρια see Vol. II. p. 175.

[4] The Eumenides.

When he was unable with all his twisting to bring home the charge in any way to me, he turned informer against Aristarchus, evidently on my account.[1] Of the rest I say nothing: but when the council was sitting to consult on that business, Midias presented himself—"Councillors," said he, "are you ignorant of the affair? When you have the murderer"—meaning Aristarchus—"are you delaying and inquiring? Have you lost your senses? Won't you put him to death? Won't you go to his house and arrest him?" Such was the language of this impudent and abominable creature, though the day before he had left the house of Aristarchus, and was formerly on as intimate terms with him as any one, and Aristarchus before his misfortune had most strongly importuned me to be reconciled with this man. If he said this believing him to be implicated in the charges which have caused his ruin, and putting faith in the tale of his accusers, he should not have said it even then; for a friend, when he is thought to have committed crime, is pretty well punished in losing your friendship for the future: penal prosecution is left for aggrieved parties and for enemies. However let Midias[2] stand excused. But, if it appear that he chatted and stayed under the same roof with him, as if he had done nothing, and made these declarations and charges with a mischievous design against me, does he not deserve to die ten times over, or rather ten thousand times? To prove that what I say is true—that the day before he said all this he had entered the house of Aristarchus and conversed with him, and on the day after again (this, men of Athens, this is the very extremity of turpitude) he called at his house, and, sitting close by him and shaking hands with him in the presence of many persons, (after that speech in the council, in which he had called Aristarchus a murderer, and everything

[1] I concur with Taylor, Reiske, Buttmann, and Schaefer, in thinking δι' ἐμὲ to be the true reading.

[2] "This is nothing for Midias—such a brute as he is" Lay emphasis on *Midias*, and the force of the original is preserved. Auger: "Toutefois faisons grace de cet article à un pareil homme." Compare Cicero, Pro Milone, 23:

"Quamquam hæc quidem jam tolerabilia videbantur: etsi æqualiter in rempublicam, in privatos, in longinquos, in propinquos, in alienos, in suos irruebat: sed nescio quomodo jam usu obduruerat et percalluerat civitatis incredibilis patientia.'

that was bad,) he swore with imprecations that he had said nothing to his disadvantage, and never cared how he perjured himself, though there were men present who knew all the facts, and at last even begged Aristarchus to effect a reconciliation between himself and me—to prove all this, I will call the parties who were present before you.

Is it not dreadful, men of Athens, is it not impious, to call a person a murderer, and then swear you never said so?—to charge him with murder, and yet sit under the same roof with him? And if I let off Midias and abandon your judgment against him, I do no wrong, as it seems; but if I proceed with the case, I have deserted my post, I am an accomplice in murder, I ought to be exterminated. In my opinion, it is just the reverse. If I let off Midias, I have deserted the post of justice, men of Athens, and might fairly accuse myself of murder;[1] for assuredly I could not have lived if I had done so.

Now for the evidence of these last facts—call me the witnesses to them.

WITNESSES.

"We, Lysimachus of Alopece, Demeas of Sunium, Chares of Thoricus, Philemon of Sphettus, Moschus of Pæania, know that, when the information to the council was presented concerning Aristarchus, the son of Moschus, charging him with having killed Nicodemus, Midias, the party prosecuted by Demosthenes for whom we are witnesses, came about that time to the council, and said, that no one but Aristarchus was the murderer of Nicodemus, and that Aristarchus had assassinated him, and advised the council to go to the house of Aristarchus and apprehend him. And this he said to the council, having the day before supped with Aristarchus in our company. We know also, that Midias, when he left the council after making that communication, called again at the house of Aristarchus, and shook hands with him, and swore with imprecations on his head, that he had said nothing

[1] Literally: "might institute a prosecution for murder against myself,"—meaning, "I should have committed a suicidal act." Pabst: *dass ich mich dann selbst mit Recht des Selbstmordes anklagen würde* For *οὐ γὰρ ἦν μοι βιωτόν*, he has: *verdiente ich gar nicht mehr zu leben* And Auger: "Je ne mériterois plus de vivre." It means rather, "life would not have been tolerable."

against him to the council, and begged Aristarchus to reconcile him to Demosthenes."

What can go beyond this? What baseness has ever equalled or ever can equal that of Midias? He turned informer against a man in misfortune, who had never wronged him, (whether he was his friend I will not inquire,) and at that very time he was asking him to effect a reconciliation between himself and me; and he did so, and spent money, in order that he might drive me as well as him into exile without a cause.

A practice such as this, a contrivance, O Athenians, to involve people who seek just redress in still further calamities, is not a thing for me to be vexed and indignant at, and for the rest of you to disregard. Far otherwise. You should all equally resent it, considering and observing, O Athenians, that the poorest and weakest among us are most exposed to oppression; while ruffians that have money can most readily commit outrages, and, instead of being punished for their misdeeds, hire persons to embarrass their accusers. You must not overlook these things: you should consider that a man, who by fear and intimidation prevents our obtaining satisfaction of him for our wrongs, in effect deprives us of the common rights of speech and liberty. I perhaps have repelled (another may repel) a false and malignant calumny, and I have not been destroyed; but what will you the many do, unless by public example you make it dreadful to all to abuse their riches in such a way? When a man has answered and stood his trial upon the charges against him, then may he avenge himself on those who attacked him wrongfully; and even then,[1] when he sees them committing wrong, he is not to snatch them out of the way beforehand, not seek by false accusations to escape from his own trial; nor ought he to be vexed at suffering punishment, but careful from the beginning not to misbehave himself.

What insults I have sustained in my official character and

[1] Pabst: *und auch dann darfst Du, wenn auch das Unrecht offenbar genug ist, um es mit Augen sehen zu können, die, welche Solches Dir zufügen, nicht im Voraus aus dem Wege räumen, noch, wenn man Dir lügenhafte Beschuldigungen aufbürdet, darnach streben, dass Du gerichtlicher Untersuchung ausweichst.* I follow the first part of this interpretation, but not the last.

in my person, and how I have escaped through snares and ill-usage of every kind, you have heard, O Athenians: and a good deal I pass by, for it would not be very easy to tell all; but thus the matter stands. In none of these proceedings have I alone been wronged: but by the offences touching the chorus my tribe, a tenth part of you, has been wronged as well as myself; by his outrages to my person, and by his machinations against me, the laws are wronged, to which every one of you is indebted for security; and by all these things the God, whose choir-master I was, is wronged, and the essence of holiness, whatever it be, the venerable and the divine.[1] Those then, who would punish the defendant as fully as his deeds deserve, should not feel as if the question concerned me alone, but considering that the laws, the God, the state, are all included in the same injury, they should take vengeance accordingly, and regard any persons who support and stand by the defendant not merely as advocates, but as approvers of what he has done.[2]

[1] That divine sanctity which, without comprehending its nature, we worship and revere. Compare Euripides, Bacchæ, 892:

Κούφα γὰρ δαπάνα νομί-
ζειν ἰσχὺν τόδ᾽ ἔχειν,
ὅτι ποτ᾽ ἄρα τὸ δαιμόνιον,
τό τ᾽ ἐν χρόνῳ μακρῷ
νόμιμον ἀεὶ φύσει τε πεφυκός.

And Orestes, 418:

δουλεύομεν θεοῖς, ὅτι ποτ᾽ εἰσὶν οἱ θεοί·

where the poet perhaps speaks with some degree of irreverence.

[2] With the whole of this passage and what follows, the reader will find much to compare in the language of Cicero against Clodius. Albert Gerhard Becker truly remarks, that Clodius was to Cicero what Midias was to Demosthenes. See the Oration De Harusp. Respons. 3:

"Videbam illud scelus tam importunum, audaciam tam immanem adolescentis furentis, nobilis, vulnerati, non posse arceri otii finibus: erupturum illud malum aliquando, si impunitum fuisset, ad perniciem civitatis. Non multum mihi sane post ad odium accessit: nihil enim contra me fecit odio mei, sed odio severitatis, odio dignitatis, odio reipublicæ. Non me magis violavit quam senatum, quam equites Romanos, quam omnes bonos, quam Italiam cunctam · non denique in me sceleratior fuit, quam in ipsos Deos immortales."

And Pro Milone, 29:

"Non timeo, judices, ne odio inimicitiarum mearum inflammatus libentius hæc in illum evomere videar quam verius. Etenim, etsi præcipuum esse debebat, tamen ita communis erat omnium ille hostis, ut in communi odio pæne æqualiter versaretur odium meum."

If Midias, O Athenians, had behaved himself on other occasions with discretion and decency, if he had wronged no other citizen, and been thus intemperate and violent with me alone, I should have looked upon it as my peculiar misfortune, and been afraid that, by showing the moderation and mildness of his general conduct, he might evade punishment for his outrage on me. As it is however, the wrongs which divers of you have sustained from him are so many in number and of such a character, that I am relieved from this apprehension, and have now a different fear, that, when you hear of so many cruel injuries done by him to other men, it may occur to you to reason in this sort of way: "How have you been worse injured than any one of the rest, that you take it thus to heart?" It would be impossible for me to tell you of all his doings, nor could you endure to listen to them: indeed, if both our measures of water, all mine and all his, were added to what is left, it would not be sufficient. However I will mention the most striking and flagrant; or rather I will do this—read to you all the memoranda, as I have set them down for myself; and I will begin with whichever you would like to hear first, then go to another, and so on with the remainder, as long as you choose to listen. There is a vast variety of them, a multitude of outrages, tricks upon relations, impieties to the gods; and there is hardly a place[1] in which you will not find many acts worthy of death to have been committed by him.

[*Memoranda of the misdeeds of Midias are read to the jury.*]

These are the things that he has done to every man that came across him, O Athenians: and I have omitted others; for no one could recount all at once the long series of outrages which Midias during his whole life has been guilty of. It is curious however to see what a pitch of arrogance he has reached by never having been punished for any of them. Nothing that could be done between man and man was bril-

[1] Τόπος. "Non intelligam de loco oratorio s. sede argumentorum, ut duumviris præclaris placuit, sed sensu proprio. Dicit Orator Midiam ubique locorum, quocunque accesserit, domi forisque, capitalia perpetrasse. Quanquam facile concedam hoc dictum esse ὑπερβολικώτερον. Eadem superlatio, quæ hic est de loco, de tempore sequitur v. 23."—*Schaefer.*

liant or brave or desperate[1] enough for him, as I imagine: unless he could affront a whole tribe and council and class,[2] and bully a large number of you in a body, he considered his life would be insupportable. And other matters I pass by, though I could tell you plenty. But of the horsemen, who went on the expedition with him to Argura,[3] you all surely know how he spoke in the assembly, after he returned from Chalcis, accusing them and saying, that the troop sent out was a disgrace to the republic: and you remember the abuse which he lavished upon Cratinus about the affair, when he was going (as I am informed) to assist him. How wicked and audacious must have been the conduct of a man, who wantonly provoked such a quarrel with so many of his fellow-citizens! But let me ask, Midias—are they a disgrace to the republic, who crossed over in order, and with such accoutrements as were proper for men about to march against the enemy and take the field with their allies?—or are you, who at the drawing of the lots prayed that you might not be chosen for service, who never yet put on your cuirass, who rode on a saddle-mule[4] from Argura in Eubœa, and carried

[1] Ἄξιον θανάτου. Pabst gives it literally: *todeswürdig.* Auger: "capital." Buttmann calls it in his note a sarcastic expression; but it appears also that he suggested the reading ἄξιον αὐτοῦ. Schaefer would omit θανάτου, as having crept in from the margin.

[2] The class of knights; as appears from what follows.

[3] The course of these events appears to have been as follows:—The expedition to Eubœa started with Phocion in the early part of Anthesterion (February). Phocion being in danger at Tamynæ, sends intelligence of it to Athens; and the Council resolve to send reinforcements, including all the remainder of the cavalry. While these were preparing, news arrives of the victory at Tamynæ, and the succours are postponed till after the celebration of the great Dionysia in Elaphebolion (March), at which Midias committed the trespasses herein complained of. After the festival a reinforcement is despatched, Demosthenes accompanying the infantry, and Midias, who was hipparch, leading the cavalry; but he went with them only as far as Argura, from which he returned to join the ship of which he was trierarch. The same horsemen that went to Eubœa with Midias were afterwards sent to Olynthus, and Midias denounced them as a wretched troop, perhaps to excuse his own desertion of them. (Compare pages 551, 566, 567, 578, Orig.)

[4] Ἀστράβη, according to Ulpian, was a sort of chair or easy saddle with a back to it, placed upon a mule. The mule itself was called by the same name. Midias is reproached with effeminacy for riding in a manner which became only women or invalids. See Becker's Charicles, p. 127.

cloaks and beakers and casks, which were seized by the collectors of customs?[1] All this was reported to us soldiers of the heavy-armed; for we did not cross over to the same place as the horsemen. Then, because Archetion or some one else joked you about it, must you bully them all? If you did, Midias, what the horsemen of your troop say you did, and what you complained of their representing, you were reproached with justice; for you were injuring and disgracing the troop and the people here and the whole republic. If it was pure scandal made up by some persons against you, and the rest of the soldiers, instead of reproving them, were delighted at your mortification, it is plain that, from your general life, they believed you to be deserving of such reproach. You ought therefore to behave yourself with more decency, not to run down them. But you threaten all, bully all: you expect others to look after your pleasure, but never look to do yourself what will give no pain to others. And the most shocking thing of all, the most striking mark of insolence, in my opinion, is this—that you should come forward, you abominable fellow, and denounce such a number of men in a body! Any one but you would have shuddered at the thought of it.

I observe, men of the jury, in the case of other people who are brought to trial, that the offences laid to their charge are one or two, while they have arguments of this sort in abundance—"What man here knows anything of the kind against me? Who has ever seen me doing such a thing? No one has. These men calumniate me out of spite: I am oppressed by false testimony"—and the like. With Midias however it is just the reverse. I take it, you all know his disposition, his offensive and overbearing behaviour; and some of you, I dare say, have been wondering about things which they know themselves, but have not heard from me now. Many of the injured parties don't even like to tell all that they have suffered, dreading this man's violence and litigiousness, and the fortune which makes such a despicable fellow strong and

Transl.; and also Buttmann's seventh Excursus, in which he supports Ulpian's reading, ἐπ' ἀστράβης δὲ ὀχούμενος ἀργυρᾶς τῆς ἐξ Εὐβοίας.

[1] Such articles as these were looked on by the officers of the customs not as military baggage, but as merchandise, which was liable to the πεντηκοστή, or duty of two per cent. charged on imports and exports.

terrible: for where a rogue and a bully is supported by wealth and power, it is a wall of defence against any attack. Let Midias be stripped of his possessions, and most likely he will not play the bully: if he should, he will be less regarded than the humblest man among you; he will rail and bawl to no purpose then, and be punished for any misbehaviour, like the rest of us. Now, it seems, Polyeuctus and Timocrates and the ragamuffin Euctemon are his body-guard: these are a sort of mercenaries he keeps about him, and others also besides them, a confederate band of witnesses, who never trouble you openly, but by simply nodding their heads affirm any lie with perfect ease. By the Powers, I don't believe they get any good from him; but they are wonderful people, O Athenians, for making up to the rich, and attending on them and giving evidence. All this, I take it, is formidable to any of you that live by yourselves as well as you can; and therefore it is you assemble together, that, where taken separately you are overmatched by any one, either in friends or riches or anything else, you may collectively be more than a match for him, and put a stop to his insolence.

Possibly however an argument of this sort will be addressed to you: "Why did such a person, after sustaining such and such an injury, never demand satisfaction of me? or why"—naming perhaps some other aggrieved party. I imagine you all know the reasons why people forbear to seek redress: there is want of leisure, love of quiet, inability to speak, lack of means, and a thousand other causes. Yet I conceive, it does not become the defendant to allege this now, but to show that he is not guilty of what I charge him with: if he cannot show it, he deserves to perish all the more; for if he is so mighty a person as to be able to do these things, and prevent each of us in turn from calling him to account, you ought all, now you have him in your power, to take common vengeance upon him, as a common enemy of the state.

Alcibiades,[1] we know, lived in Athens in the days of her

[1] The political actions of this extraordinary man are related in the last four books of Thucydides and the first of Xenophon's History. As to his pedigree, the curious may consult the notes of Palmer and others in the Apparatus Criticus, and those of Spalding and Buttmann. Of his pranks and frolics we have a pretty ample account in the Life of

ancient prosperity How many and how important were the services he had rendered to the people; yet see how your

Plutarch, and the oration of Andocides against him, fully bearing out the character given him by Antisthenes (Athenæus, v. 220), that he was παράνομος καὶ εἰς γυναῖκας καὶ εἰς τὴν ἄλλην δίαιταν. Among other anecdotes, we have the following:

He gave Hipponicus, one of the wealthiest citizens of Athens, a slap in the face, merely because he had boasted to some of his boon companions that he would do it. He afterwards made a humble apology to him, and married his daughter Hipparete, with whom he received a portion of ten talents.

Hipparete afterwards left his house for ill-usage, and sued for a divorce; but when she attended the Archon's office, Alcibiades carried her back by force, and she continued to live with him till her death. Andocides charges him with attempting to murder her brother Callias, in order to get the whole of their father's patrimony.

The story of his imprisoning Agatharchus is told differently by Andocides and Plutarch, and without the excuse mentioned by Demosthenes. It was a trick, by which he compelled Agatharchus to paint his own house and to break another engagement.

The assault upon Taureas was like that of Midias upon Demosthenes, except that it does not appear to have been malicious. Andocides says that, notwithstanding the displeasure of the spectators, the umpires out of fear or favour gave Alcibiades the prize.

A remarkable instance of his setting the laws at defiance is mentioned in Athenæus, ix. 407. Hegemon the Thasian, a famous composer of parodies, having been summoned to appear to an action, applied to Alcibiades for assistance. Alcibiades went with him to the record office, kept in the temple of Cybele, and with his own hand erased the plaint which had been lodged against his friend. The plaintiff was so frightened that he abandoned the cause, and the officials, who should have prosecuted him, hushed the matter up.

At the Olympic festival, where he gained so many prizes and made so splendid an appearance, he appropriated to his own use a chariot and pair belonging to Diomed, an Athenian, availing himself of his influence with the Elean managers to accomplish such a piece of injustice.

His mad freaks soon became notorious over all Greece. Some one observed that Sparta could not have borne two Lysanders, nor Athens two Alcibiades. (Athenæus, xii. 535.) Unhappily he did not confine himself to practical jokes upon individuals, but played political tricks that were fatal to his country. Timon the misanthrope is said to have been delighted at seeing his aptitude for mischief. Shakspeare, who found this in Plutarch, has improved on it in his Timon of Athens. Perhaps there is no better description (in a short compass) of the temper and character of Alcibiades than what is contained in the lines of Aristophanes, Ranæ, 1431.

> οὐ χρὴ λέοντος σκύμνον ἐν πόλει τρέφειν,
> ἢν δ' ἐκτρέφῃ τις, τοῖς τρόποις ὑπηρετεῖν.

ancestors dealt with him, when he thought proper to be offensive and insolent. It is assuredly from no wish to liken Midias to Alcibiades that I mention the case; I am not so silly or so stupid; but to make you see and understand, men of Athens, that there is nothing, there can be nothing, neither birth nor riches nor power, which the mass of the people ought to tolerate, if accompanied with insolence. Alcibiades, O Athenians, is said to have been by his father's side of the race of the Alcmæonids; who, as we are told, were driven into exile by the tyrants for espousing the democratic party, and, having borrowed money from Delphi, liberated the commonwealth and expelled the sons of Pisistratus.[1] By his mother's side he came from Hipponicus and that house which boasts of many signal obligations conferred upon the people. And, besides having these things in his favour, he himself took arms for the people, twice in Samos and a third time in Athens,[2] displaying loyalty to his country not by gifts of money or words, but by hazarding his life. Nay more; he had been competitor in the chariot-race at Olympia, and had won victories and garlands; and he was considered (as they tell us) to be of all men the ablest general and most eloquent speaker. Nevertheless your ancestors, his contemporaries, did not for any of these reasons allow him to insult them, but banished and exiled him from the city; and the Lacedæmonians being then powerful, they submitted to have Decelea fortified against them. and to have their ships taken, and to the last extremities, deeming it more honourable to suffer anything by compulsion than consent to be treated with indignity. Yet what outrage did Alcibiades ever commit equal to that which Midias is now proved to be guilty of? He slapped Taureas on the cheek, while discharging the choragic office. Granted. But it was an act done by one choir-master to another; and he was not then violating the present law, for it had not then been enacted. He imprisoned Agatharchus the painter, so they say; but he had caught him in a trespass, we are told; and it is not fair even to mention it to his reproach. He mutilated the busts of Hermes. All acts of impiety, I conceive, should be visited with the

[1] See more particularly Herodotus vi. 123. &c.

[2] When he marched with the Athenians to Eleusis, and enabled them to celebrate the Mysteries. (Xenophon, Helen. i. c. 4. s. 20.)

same anger; and can the total destruction of a sacred robe differ from the mutilation of Hermes' busts? Of that offence however Midias stands convicted. Let us compare the cases.[1] Who is Midias, and who are they to whom he so demeans himself? Rest assured, men of the jury, that (besides being dishonourable) it would be unlawful and unrighteous in you, the descendants of such a people, when you have got in your power a rascally and outrageous bully, a mere nobody and the son of nobody,[2] to accord him either mercy or pity or favour. Why should you? For his services as general? Why, even as an individual soldier he is not good for anything, much less as a leader of others. But for his speeches? In none did he ever utter a word for the public good, but he abuses every one's private character. For his family's sake peradventure. And which of you is ignorant of his mysterious birth, resembling what one sees in a tragedy? Two of the most opposite things have befallen him. His real mother who brought him forth was the most sensible of human beings, while she that passed for his mother, she that took him supposititiously, was the most foolish of all women. Why? Because the one sold him as soon as he was born; the other, when she might have purchased a better for the same price, bought Midias. And hence it is, that having obtained advantages to which he was not entitled, having found a country which of all states is reputed to be the most constitutionally governed, he is able in no way, as it seems, to bear his fortune or to make use of it. His nature, essentially barbarous and hateful to the Gods, drags him violently on, and makes it evident that he treats his present privileges as if they were not his own; which indeed is the case.

[1] He contrasts the case of Midias with that of Alcibiades. The argument was simple and obvious. "The Athenians of former days punished Alcibiades for his misbehaviour, notwithstanding his high birth and various merits. You, the descendants of those Athenians, would be bound in like manner to punish Midias, even if he had all the good qualities of Alcibiades. But when you see that, instead of being well-born, brave, generous, and eloquent, he is an utterly contemptible person in all respects, it would be monstrous if you showed him any mercy after taking such daring liberties with his fellow-countrymen." The orator, not choosing to follow the argument step by step, breaks at once into the conclusion.

[2] Μηδένα μηδαμόθεν. Auger and Pabst follow Wolf's interpretation "vilissimum hominem." I follow Schaefer.

The performances of this odious wretch having been such as I have enumerated, some of his intimate friends, men of the jury, came advising me to withdraw and compromise the cause; not succeeding with me, they never dared to say that he had not committed gross offences and merited the heaviest punishment, but took this ground, that he had already been found guilty and condemned. "What penalty," said they, "do you expect the court will inflict upon him? Don't you see that he is wealthy, and will speak of trierarchies and official services? Mind that he doesn't beg himself off by it and laugh at you, paying much less to the state than what he offers you." Now, in the first place, I don't believe an Athenian jury capable of anything mean, nor imagine they will sentence him to any lighter penalty than one by which his insolence will be checked; that is, either death, or at least, confiscation of his property. In the next place, as to his official services, his trierarchies and such matters, I will tell you what I think. If this be to serve public offices, to say before you in all the assemblies and on every occasion, "We are the people who serve public offices, we are the men who advance the taxes, we are the wealthy class"—if to talk in this style is to serve public offices, I acknowledge that Midias is the most magnificent person in the state; for surely his harsh and unfeeling way of talking about these things grates upon our ears in every assembly. But if you want tc know what official services he really performs, I will tell you; and mark how fair a test I will bring him to, comparing him with myself.

The defendant, O Athenians, being about fifty years of age or somewhat less, has served no more public offices than I have, who am thirty-two. And I served the trierarchy, immediately after quitting boy's estate, at that period when we were two together in command, and when we defrayed the whole cost out of our private purses, and manned the ships ourselves.[1] The defendant, when he was at the age which I am now, had not begun to serve offices; he has only entered upon the duty since you have established the company of twelve hundred,[2] from whom these men collect a talent, and for that sum procure a deputy-captain; then the state finds

[1] See Böckh's Public Economy of Athens, Transl. ii. 333.

[2] Ibid. ii. 341. And see the first volume of this work, Appendix V

the crews and provides tackle; so the result is, that some of them really spend nothing, and, while they appear to have served an office, have enjoyed exemption from all other services.

Well, but what else? He has once furnished a tragic chorus; I have furnished a chorus of flute-players: and that the expense of this greatly exceeds the cost of the other, every one must be aware. And my service now was voluntary; his then was forced upon him by a tender of exchange, for which surely he can deserve no thanks. What besides? I have feasted my tribe, and furnished a chorus at the Panathenæa: he has done neither. I was ten years director of one of your tax-boards, paying as much as Phormio and Lysithides and Callæschrus and the wealthiest people, not from property in my possession, (for I had been robbed by my guardians,) but from the reputation of what my father left me and what I ought to have obtained on coming of age.[1] Thus have I dealt by the people: how has Midias? Not even to this day has he been director of a board of taxes, though he never was deprived by any one of the least part of his inheritance; but received from his father a large estate. Where then are his grand doings? Where are his official services and magnificent outlays? I cannot see, unless one looks at these things—he has built a house at Eleusis so large as to darken all in the place; and he carries his wife to the mysteries, or anywhere else that she likes, with his white pair from Sicyon;[2] and he

[1] Δοκιμασθέντα. "After passing that examination, as to birth, &c., which entitled me to be enrolled as a citizen." This was in his eighteenth year.

[2] "Very little can be said of the carriages of the Greeks, and even their general shape is involved in doubt. Of names we have but a scanty list, the general terms ζεῦγος and ὄχημα being mostly employed. The use of carriages was very limited, and he who used one in the city and environs was set down as effeminate and proud. (Demosthenes cont. Phænipp. 1046; Aristophanes, Thesm. 811.) It was considered arrogant even in women. Hence Lycurgus the orator caused a law to be enacted that the women should not drive to Eleusis, that the poorer classes might not feel the distinction. His own wife however transgressed the law, and he had to silence the informers with a talent." —Becker's Charicles, Transl. p. 126, note 26.

The ancient kings of Sicyon used to drive white mules; and therefore, as Ulpian says, the white pair of Sicyonians would be deemed a mark of arrogance in Midias, τρυφῆς ὁμοῦ καὶ τυραννικῆς ἐννοίας τεκμήριον.

himself pushes[1] through the market-place with three or four attendants, talking of beakers and drinking-horns and saucers[2] loud enough for the passers-by to hear. I know not how the mass of the people are benefited by what Midias purchases for his luxury and pride; but I see that the insolence which they encourage in him reaches a good many of you, and some of the humblest too. Then don't honour and admire things of this kind always; don't judge of liberality by these tests, whether a man builds splendid houses, or has many female servants or handsome furniture; but look who is spirited and liberal in those things which the bulk of you share the enjoyment of. Midias, you will find, has nothing of that kind about him.

Oh, but he gave a ship of war:[3] I am certain he will

[1] Σοβεῖ. "Hoc Cicero appellat *per forum volitare.* Fortius tamen Græcum, ubi inest summotus occurrentium."—*Spalding.* See Orat. Catilin. ii. 3.

[2] "The common forms of drinking-vessels which perpetually recur on monuments are the *κύλιξ*, the *φιάλη*, and the *καρχήσιον*, or, what much resembles it, the *κάνθαρος*. The *κύλιξ* occurs most frequently, and when empty is generally held by one of its two handles. The *φιάλη*, a kind of saucer, without handle or foot, was laid on the palm of the left hand, whilst the right sometimes holds a drinking-horn. These were called *κέρατα* or *ῥυτὰ*, and occur in manifold shapes. The original and oldest shape is that of the simple bullock's horn, but the pointed end of this was afterwards transformed into the figures of divers beasts. The proper *ῥυτὸν* had an opening in the bottom, from which the wine poured into the mouth of the drinker. Inasmuch as the *ῥυτὸν* differed nothing in form from the *κέρας*, it is not surprising that the name is also applied to similarly-shaped vessels having no opening. According to the kind of head in which the lower end of the rhyton terminated, so was it named; as, for example, *γρὺψ, κάπρος, ἵππος, Πήγασος*, and so on."—Becker's Charicles, Transl. p. 106, note 31.

The *ῥυτὸν* and the *κυμβίον* are both described by Athenæus, xi. 481, 497. The latter was named from its boat-like shape. *Ἐπιμηκὲς τὸ ποτήριον καὶ στενὸν τῷ σχήματι, παρόμοιον πλοίῳ.* Martial speaks of them both,—viii. 6:

> Archetypis vetuli nihil est odiosius Eucti
> Ficta Saguntino cymbia malo luto.

And ii. 35:

> Cum sint crura tibi simulent quæ cornua lunæ
> In rhytio poteras Phœbe lavare pedes.

[3] This means that he volunteered to be trierarch. The state found the vessel itself · the person who provided the outfit and put it in sailing condition might well be said "to give a ship to the state;" for,

boast of this and say, "I gave you a ship." Now take my advice, men of Athens. If he gave the ship from patriotic motives, be thankful to him, requite him as he deserves for his kindness; but don't permit him to be insolent: that should not for any consideration be allowed. If however he can be shown to have acted from base and dastardly motives, don't you be imposed upon. How can you know the truth? I will explain even this, but I must give the whole story: it will not take long to tell from the beginning.

You had voluntary contributions first for the expedition to Eubœa.[1] Midias was not in those, but I was; and my colleague in the trierarchy was Philinus the son of Nicostratus. A second time you had them for Olynthus.[2] Midias was not in those either: yet surely a man of public spirit should come forward upon every occasion. Thirdly, there have been these last voluntary contributions. Here he was a contributor. How? When offers of contribution were made in the council, he was present and made no offer. But when news was brought that the troops at Tamynæ were surrounded, and the council passed a resolution to send out all the remaining horsemen, including the defendant, he, dreading the campaign, came forward at the ensuing assembly, before even the committee-men had taken their seats, and announced himself a contributor. That his object was to shirk the campaign, and not to be generous, is too clear even for him to deny. How does that appear? By his subsequent conduct: for in the first instance, when it was determined after some discussion in the assembly, that the reinforcement of horse was not then necessary, and the people had cooled about the expedition, he did not go on board the ship which he had given, but sent out the resident alien Pamphilus, the Egyptian, while he himself stayed at home and did those acts at the

until this was done, the empty hulk was of no service. Böckh however speaks doubtfully as to the meaning of the expression. (Public Economy of Athens, Transl. ii. 352.)

[1] This was the expedition against the Thebans, as to which see Volume II. p. 257. The trierarchy of Demosthenes is the same as that spoken of at page 91.

[2] Whether this was an expedition against the Olynthians while they were in alliance with Philip, or one of those sent to their succour against Philip in 350—349 B.C., is a debatable point. Böckh and Thirlwall take the former view; Grote the latter.

Dionysia for which he is now upon his trial. Afterwards, when Phocion the general sent for the cavalry from Argura[1] to take their turn of service, and he was caught in his

[1] Reiske thinks that the words τοὺς ἐξ Ἀργούρας ἱππέας denote horsemen who had served at Argura and returned to Athens. Buttmann adopts the same view. Yet, according to the common rule of construction, these words should be understood of horsemen who were at Argura when Phocion sent for them. And it by no means appears from other parts of the oration, that these horsemen had ever returned from Argura to Athens. Looking at the various passages in which the circumstances of the Eubœan campaign are referred to by Demosthenes, I am inclined to think that Midias and his troop of horse went only once to Eubœa, and not twice, as Reiske supposes. It appears from the beginning of this page (567), that just before the battle of Tamynæ Midias and all the cavalry not with Phocion's army (τοὺς ὑπολοίπους ἱππέας) were at Athens. The Council order them to be sent out, and Midias (being one of the two hipparchs) would have had to go with them; to avoid which (according to Demosthenes) he volunteered to be trierarch. The Assembly countermand the order of Council; and Midias, to escape personal service of the trierarchy, sends out Pamphilus as his deputy. After the Dionysia however a troop of horse is despatched to Argura, perhaps to take possession of that place, which fell into the hands of the Athenians through the victory of Tamynæ. Midias accompanies them He was not able to avoid it, his ship having sailed, and his name having been drawn for the service. (P. 558: τῶν συστρατευσαμένων ἱππέων εἰς Ἄργουραν. . . . ὁ μὴ λαχεῖν εὐχόμενος τῶν ἐξιόντων, ὅτ' ἐκληροῦ.) A reinforcement of infantry was sent about the same time. To these Demosthenes was attached. (P. 558: ταῦτα γὰρ εἰς τοὺς ὁπλίτας ἡμᾶς ἀπηγγέλλετο, &c.) It is very possible that the infantry were sent off before the Dionysia, (this may perhaps be implied by the words οὐκ ἐδόκει τῆς τῶν ἱππέων βοηθείας ἤδη δεῖν), and Demosthenes, staying to perform his choragic duty, did not join them till afterwards, and was for that very reason indicted by Euctemon. Phocion, still carrying on military operations, and desiring to relieve the horse who had served at Tamynæ, or to exchange them for a more efficient troop, sent for those stationed at Argura. Midias, instead of marching with them, went to take command of his ship, which had helped to convoy the troops and was then lying in some port of Eubœa, perhaps Chalcis. (P. 558: ὑθ' ἧκεν ἐκ Χαλκίδος.) It was on this occasion that he rode on the mule from Argura, as there described. Οὐ συνεξῆλθεν in this passage signifies, not that Midias avoided going from Athens with the cavalry, but that he did not go with them to join Phocion. The whole fleet afterwards assembled at Styra, a port of Eubœa to the south of Eretria, from which it convoyed the troops on their return to Athens; while Midias, lingering behind, brought home the various articles mentioned in pp. 558, 568.

Any view that we may take of these occurrences must be open to doubt; first, because there are links of the story to be supplied by conjecture; and, secondly, because we cannot fully rely on the accuracy of every statement made by the orator.

manœuvring, then this dastardly wretch, quitting the post assigned to him, went off to his ship, and declined to serve with those horsemen whom he thought proper to command at Athens. Had there been any danger by sea, it is plain he would have gone off to the land. Not thus did Niceratus act,[1] the son of Nicias, the beloved, the childless,[2] the utterly feeble in body: not thus Euctemon the son of Asion, nor Euthydemus the son of Stratocles. They volunteered each of them to give a trireme, but did not run away from the campaign: their ships they presented in sailing condition as a free boon to the commonwealth, but they resolved to do personal service in the place where the law commanded them. Not so the hipparch Midias: he deserted the post assigned him by the laws, and will reckon that as an obligation, for which he ought to render an account to the state. Such a trierarchy as this, by heavens! what should it be called?—a farming of taxes and a two-per-cent,[3] a desertion of post, a running away from service, and the like—or an act of liberality? Having no other way to get himself exempted from serving with the cavalry, Midias has discovered this new sort of two-per-cent for it. For here again—when all the other volunteer trierarchs were convoying you, at the time when you sailed home from Styra, he alone took no part in the convoy; but disregarding you, he was getting in stakes and sheep and planks for his private residence and wood for his silver-works: and the trierarchy has been a lucrative job to this despicable fellow, not a performance of duty. As to the truth of these statements—though indeed most of them are within your own knowledge—I will call witnesses before you.

[1] The grandson of that Niceratus who perished under the Thirty Tyrants, and who was the son of Nicias the eminent general. See Buttmann's eighth Excursus.

[2] He might therefore perhaps have had an excuse for staying at home, as the last survivor of his family, which by his death would have been lost to the republic. Pabst follows the reading of παῖς.

[3] As a farmer of taxes or an importer of merchandise obtains considerable advantages, the one by paying a small rent, the other by paying a small duty to the state, so Midias, by defraying the moderate cost of a trierarchy, avoided the trouble and danger of military service.

WITNESSES.

"We, Cleon of Sunium, Aristocles of Pæania, Pamphilus,[1] Niceratus of Acherdus, Euctemon of Sphettus, at the time when we sailed back from Styra with our whole fleet, were ourselves trierarchs, as also was Midias, the party now prosecuted by Demosthenes for whom we are witnesses. The whole fleet was sailing in order, and the trierarchs had command not to separate until their arrival, when Midias stayed behind the fleet, loaded his ship with wood and stakes and sheep and some other things, and arrived in Piræus by himself two days after, and did not assist the other trierarchs in bringing the fleet into port."

If his deeds and services, men of Athens, were really what he will tell you and brag of presently, and not what I show them to have been, surely even then he would not be entitled by his services to escape the punishment of his insolence. I know that many persons have conferred benefits upon you—not in the style of these services performed by Midias—some by victories at sea, some by capture of cities, others by the erection of glorious trophies for the commonwealth; yet to none of them have you ever granted, nor would you grant, such a privilege as this, for each to insult his private enemies when he pleases and as he may. Even Harmodius and Aristogiton had no such liberty, though on them you have bestowed the highest honours for the highest deserts; nor would you have endured that any one should add to the pillar, "and it shall be lawful for them to insult whom they please." For on this very account they received their other honours, because they had put the insolent down.

That he has obtained from you, men of Athens, not only the full recompense of his own official services, (which would have been very small), but one ample enough even for the greatest, I will proceed to show, lest you should imagine that you owe anything to this despicable fellow. You, Athenians, elected him, such as he is, to be steward of the Paralus,[2] and again to be commander of horse, though he is not able to ride

[1] Probably the same Pamphilus whom Midias deputed at first to command his ship, and who, being an alien, did not belong to any Attic township.

[2] The sacred galley so called. See Vol. I. p. 106.

through the market-place in the processions; and superintendent of the Mysteries[1] formerly, and sacrificer, and purchaser of victims,[2] and the like. Then, by the Gods! do you consider it a slight boon and recompense, that the meanness and cowardliness and baseness of his nature should be mended by your honours and dignities and appointments? Only take these things from him—"I have been commander of horse: I have been steward of the Paralus"—and what else is he good for? Surely you know that, when he became steward of the Paralus, he plundered the Cyzicenes of more than five talents, and, to escape punishment for it, he pushed about and plagued the men in every way, and made the law-treaty a nullity, whereby he has set their state at enmity with ours, and kept the money to himself;[3] and that, since he has been created hipparch, he has ruined your cavalry, passing such laws as he himself afterwards denied having passed. And being steward of the Paralus, at the time when you made your expedition against the Thebans to Eubœa, though he was commissioned to lay out twelve talents of the public money, and had your orders to sail and convoy the troops, he never executed his duty, but arrived after the truce which Diocles concluded with the Thebans; and then he was beaten in sailing by one of the common galleys; so well had he equipped the sacred galley. Again, as hipparch—what think ye of the rest?—even a horse, a horse this man of wealth and splendour could not make up his mind to purchase, but conducted the processions on another man's horse, one belonging to Philomelus of Pæania; and this all the horsemen know. However I will prove my statements. Call me the witnesses to them.

[*Witnesses.*]

I will advert now, men of Athens, to those who have already undergone your sentence, after the assembly had pro-

[1] See Appendix VI.

[2] There were ten *ἱεροποιοὶ* elected every year to conduct the principal sacrifices; and also *βοῶναι* who purchased oxen for victims. See Böckh, Public Economy of Athens, Transl. i. 289.

[3] This, according to Ulpian, was a privateering act committed in the Social war; for which, as the Cyzicenes could obtain no redress, they joined the enemies of Athens. As to the *σύμβολα*, see Vol. I. p. 91, note 1.

nounced them guilty of profaning the festival; and I will show what punishment they have received from you, and what they had done to deserve it, that you may contrast their cases with the acts of the defendant.

First then—that I may begin with the last conviction—the people resolved that Evander the Thespian had committed a contempt of the Mysteries, upon a complaint against him by Menippus a Carian. The law concerning the Mysteries is the same as this concerning the Dionysia, and it was passed subsequently to this. What, men of Athens, had Evander done to call for your condemnation? Listen. He had obtained a verdict against Menippus in a mercantile cause,[1] and being unable (as he said) to catch him before, he seized his person while staying here at the Mysteries. The people condemned him on this account, and there was nothing further in the case; and when he came into court, you were disposed to punish him with death, but, the complainant coming to terms, you compelled him to forego the whole of the judgment which he had formerly recovered, amounting to two talents, and to pay such damages as the man computed he had sustained by stopping to prosecute. Here was one person, out of a private affair attended with no insult, thus heavily mulcted for the simple breach of the law; and properly: for this is what you are bound to maintain, the laws, your oath: these you jurors of the day receive as a deposit from your countrymen, to be kept safe for all who come to you with justice on their side.

Another person was considered by you to have profaned the Dionysia, and you passed a decree against him, though he was assessor to his son, the Archon, because he laid hands on a man taking a wrong seat, and turned him out of the theatre. He was father of the esteemed Chariclides, who held the office of Archon. And the complainant, in your opinion, had a good and strong point to urge—"If, man, I was taking a wrong seat, if I was disobeying the proclamations, as you say I was, what power have you by the

[1] Certain actions founded upon written contracts between merchants were called ἐμπορικαὶ δίκαι, *mercantile causes*. In the time of Demosthenes they were tried in the six winter months, and, for the convenience of commerce, were brought to a decision within the space of a month. If a verdict was given against the defendant, he was liable to be thrown into prison until he had paid the debt or given security.

law? what has the Archon himself? To desire the officers to turn me out. Am I still refractory? You may impose a fine—anything but lay your own hands upon me: for the laws have taken great pains to prevent people suffering personal outrage." Thus he argued, and you passed a condemnatory vote; but the party never came into court, for he died first.

There was another man whom the whole assembly pronounced to have committed a contempt of the festival; and when he came before the jury, they sentenced him to death. I mean Ctesicles. Why did they so? Because he carried a whip in the procession, and, when he was drunk, lashed a man with whom he had had a quarrel. It was thought that he gave the blow maliciously, and not under the influence of wine; that he used the pretext of holiday-time and drunkenness to commit a tortious act, and treat a freeman as a slave.

All these persons, O Athenians, (one of whom is shown to have forfeited a verdict which he had recovered, another to have been punished with death,) had committed, as I am sure you will all agree, far less heinous offences than Midias. He, neither walking in a procession, nor having recovered a judgment, nor being assessor, nor having any other excuse than insolence, has done worse things than any of them. I will pass by those cases. But Pyrrhus, O Athenians, the Eteobutad,[1] had an information laid against him for acting as juryman while he was a public debtor, and some of you thought that he should be capitally punished; and he was convicted before you, and has suffered death. Yet the gain which he attempted to make was not to gratify insolence, but to satisfy want. And many more could I mention, who have either lost their lives or been disfranchised for much slighter causes than these. You, men of Athens, imposed on Smicron a penalty of ten talents, and the same upon Sciton, for proposing (as you thought) illegal measures: and you had no

[1] The Butadæ were an Athenian family (γένος) of great antiquity, from whom was chosen the priestess of Ἀθήνη Πολιάς. When Attica was divided into townships, they gave their name to one which included them with other families. It was called Butea, and its members Butadæ. The ancient family then, to distinguish themselves from the members of the township, assumed the name of Eteobutadæ, *the true or genuine Butads.*

pity either for their children or their friends or their relatives, or for any persons who attended to support them. Do not let it appear then, that you are so angry when people move illegal decrees, but, when they break the law by acts instead of words, you are indulgent. For no speech or language can be so grievous to the multitude, as the behaviour of a man who bullies every one that meets him. Do not, O Athenians, give such a sample of your character as this, that, if you find an inoffensive man of the people doing wrong, you will neither pity nor pardon, but put to death or disfranchise him, while, if any rich man plays the bully, you will have mercy. Do not, I entreat you: it would not be just: but let it be seen that your displeasure is in all cases the same.

There is one point which I deem as important as anything yet stated: I will just mention it with some brief remarks, and then sit down. The mildness of your disposition, men of Athens, is a great help and advantage to all the doers of wrong. That you should not allow the benefit of it to Midias, I will convince you. I consider that all men pay club-money[1] to their own account during their lives, not that only which there are people to collect and make up, but a different sort. For example: there is one of us civil and obliging and charitable; he is entitled to the like treatment from all, if ever he falls into distress or trouble. Here is another, impudent and overbearing, regarding people as beggars or scum of the earth or nobodies: he deserves to be repaid in the same coin that he has treated his neighbours to.[2] Just look fairly at the matter, and you will see that Midias has paid club-money of the latter sort, not of the former.

I know he will have his children and whine; he will talk very humbly, shedding tears and making himself as piteous as he can. Yet the more he humbles himself, the more ought you to detest him, O Athenians. Why? Because, if the outrageousness and violence of his past conduct arose out of his inability to be humble, it would have been fair to make

[1] See ante, page 99, note 1.

[2] Pabst: *Hiergegen ist ein Anderer wie dieser anmassend und übermüthig frech gegen Viele, so dass er die Einen wie Bettler, die Andern wie einen Auswurf der Gesellschaft behandelt, und die Uebrigen für gar Nichts achtet, muss ein Solcher nicht mit gleicher Münze wieder bezahlt werden, für das was er Andern gethan hat?*

some allowance for his temper and the accident which made him what he is: but if he knows how to behave himself properly when he likes, and has adopted a different line of conduct by choice, surely it is quite evident that, if he eludes justice now, he will again become the same Midias that you know him for. You must not listen to him then; you must not let the present occasion, when he is playing the hypocrite, have more weight and influence with you than the whole past of which you have experience. I have no children; I could not place them before me and weep and wail over my ill-treatment. For this shall I, the sufferer of wrong, fare worse with you than the doer of wrong? Heaven forbid! When Midias having his children by him requests you to give your votes to them, think that I am standing by with the laws and the oath that you have sworn, conjuring and entreating you all to vote in their favour. You ought on many accounts to side with them rather than with the defendant. For you have sworn, men of Athens, to obey the laws; you share in equal rights through the laws; all the blessings that you enjoy are owing to the laws, not to Midias or the children of Midias.

Perhaps he will say of me—"This man is an orator." Well: if one who advises what he thinks for your good, without being troublesome or intrusive, is an orator, I would not refuse nor deny the name: but if an orator be what (to my and to your knowledge) certain of our speakers are, impudent fellows enriched at your expense, I can hardly be that; for I have received nothing from you, but spent all my substance upon you except a trifle; though, were I the vilest among them, I should rather be prosecuted according to the laws than insulted in the performance of my official duty. Besides, there is not one of the speakers who advocates my cause: and I don't blame any of them; for I myself have never spoken a word to you for any of their sakes, but resolved both in speech and action to take that independent course which I deem for your advantage. You will presently see all the orators ranged on the side of the defendant. How then can he fairly reproach me with the name of orator, when by men of that description he expects himself to escape?

Probably also he will say something of this kind—that all my speech is considered and prepared. I admit, O Athenians,

I will not deny that I have considered it, aye, and got it up as well as I possibly could: I were a simpleton indeed, if, having suffered and still suffering such injuries, I took no pains about the mode of stating them to you. I maintain however that Midias has composed my address: he that has supplied the facts which the speech is about may most fairly be deemed its author, not he who has only considered or studied how to lay an honest case before you. This is what I do, men of Athens; I myself confess it. Midias, it is likely enough, has never in his life considered about anything that was right: had it occurred to him to pay the slightest regard to such things, he would not have erred from the path of right so entirely.

I fancy he will not scruple to accuse even the people and the assembly, but will repeat now what he ventured to say on his first arraignment; namely, that all who stayed at home when they should have been on military service, and all who had deserted the garrisons, took part in the assembly, and those that voted against him were choristers and aliens and persons of that sort. For he had reached such a pitch of impudence, men of the jury, as all you that were present know, that by railing and threatening, and looking at whatever part of the assembly was clamorous for the moment, he thought to strike the whole people with terror. I should think therefore his tears now would look somewhat ridiculous. How? you pestilent creature! Can you ask these men to pity your children or yourself, or to take an interest about you —these men whom you have cast public shame upon? Are you to be a singular instance of a man, who in his life is so conspicuous for overweening arrogance and pride, that even strangers are offended when they observe his audacity, his voice and gestures, his attendants, wealth, and insolence— but on his being brought to trial is immediately an object of compassion? You would indeed be a person of wonderful fortune,[1] or rather talent, if in so short a time you could

[1] Μεγάλην ἄν ἀρχὴν εἴης εὑρηκώς, according to Reiske and Buttmann, is a proverbial expression, meaning in effect: "You would have found a great prize—you would be a very lucky man." Auger, not adverting to this, transposes ἀρχὴν and τέχνην in his version: "Vous auriez sans doute un talent rare, ou plutôt un ascendant bien extraordinaire." Pabst: *In der That eine grosse Macht oder vielmehr Kunstfertigkeit hättest Du Dir errungen.*

attract to yourself two things of the most opposite natures, disgust at your conduct, and pity for your artifices.[1] Not a particle of compassion on any account do you deserve, but on the contrary, hatred and ill-will and indignation: that is due to you for your conduct. But I revert to what I said, that he will accuse the people and the assembly. When he does this, bethink you, men of the jury, that he came to you in the assembly and accused the horsemen who had served with him, when they crossed over to Olynthus. Now again, having stayed at home, he will accuse the people to those who were out on service.[2] Will you agree then, that, whether you stay at home or go out, you are such as Midias pronounces you to be, or rather that Midias is at all times and places execrable and abominable? I think you will characterise him thus! What can be said of a person, whom neither cavalry soldiers nor colleagues in command nor friends can endure? To me, by Jupiter and Apollo and Minerva! (it shall be spoken, whether for my good or not,[3]) when he went about with the story that I had withdrawn, it was plain that some of his most familiar acquaintances were annoyed. And by Jupiter, there is much excuse for them; for the man is intolerable: he alone is rich, he alone is able to speak; all people to him are beggars, scum of the earth, not human beings.

He that bears himself so insolently—what do you think he'll do, if he is acquitted now? I'll tell you how you may judge—By the evidence which he has furnished since the popular sentence. For what man, after being declared guilty by the people, guilty too of profaning the festival, though there had been no further risk or peril hanging over him,

[1] "Egregium ἀπροσδόκητον (*inopinatum;* confer Quintil. 9, 2, 23, et 6, 3, 84), cùm expectes ἐφ' οἷς ὀδύρῃ: pro quibus, quia mera fraus est hæc lamentatio, statim subjicit ἐφ' οἷς ἐξαπατᾷς."—*Spalding.*

[2] He will denounce the people who composed the assembly to those who were serving in Eubœa when the assembly was held. See ante, page 120, note 1.

[3] Schaefer thinks, that the words in the parenthesis indicate contempt of the friends of Midias: as if the orator doubted whether it was worth while to mention their opinion. I think the orator affects to be alarmed at the possibility of their taking offence. Thus Auger: "Je ne craindrai pas de le dire, quoiqu'il en arrive;" which he explains in a note,—"qu'ils soient choqués ou non que je révèle leur secret." Pabst: *denn aussprechen will ich's, mag es mir nun nutzen oder schaden.*

would not have held down his head[1] and behaved himself with decency, during the interval before his trial at least, if not ever after? Any one would have done so: but not Midias. He ever since that day has been talking, railing, and bawling. Is there an election coming on? Midias of Anagyrus is a candidate. He is the state-friend of Plutarch; he knows the secrets; the city does not contain him. And it is plain he does all this only to made a parade of himself—"I have suffered nothing by the popular sentence: I have no fear or dread of the coming trial!" Does not a man who thinks it disgraceful to fear you, O Athenians, and a fine thing to brave you, deserve to perish ten times over? He fancies you will not know how to deal with him. Rich, bold, conceited, impudent, loud in voice, violent in act: where will you catch him, if he escapes you now?

For my part, I think that for the speeches he makes in every assembly and the occasions on which he makes them, if for nothing else, he merits the severest punishment. You must be aware, that if any good news is brought to Athens, of a nature that is cheering to all, Midias never shows himself among those who congratulate or rejoice with the people: but if there be any bad tidings, unwelcome to all the rest, he starts up directly to harangue you, jumping at the opportunity, and profiting by the silence which you maintain under your affliction. "You are such a people, O Athenians: you perform no military service, you don't choose to pay taxes. Is it a wonder then that your affairs go badly? Do you suppose I'll pay taxes for you, and you spend the money? Do you suppose I'll furnish galleys, and you not go on board?" Thus scornfully does he express himself, displaying, when occasion offers, that bitterness and malevolence of spirit, which, go where he will, he secretly cherishes against the common people. You, Athenians, must do the same now: and when he tries to wheedle you out of your verdict by tears and lamentations and entreaties, answer him thus—"You are such a person, Midias: you are a bully, and won't keep your hands to yourself. Is it a wonder then that you should perish like a wretch as you are? Do you imagine

[1] Οὐκ ἂν κατέδυ. Auger: "ne s'enfermeroit pas dans sa maison." Pabst: *nicht vor Scham sich in den Boden verkrochen.* This is giving it, as Buttmann says, "nimis gravem sensum."

that we shall take blows, and you give them? or that we shall acquit you, and you not leave off?"

And the speakers come to his aid, by the Gods, not so much to benefit him, as to annoy me, on account of the private quarrel which this man,[1] whether I allow it or not, declares he has had with me, and persists in declaring without reason. Truly there is a risk of too much prosperity making people offensive sometimes. For when I, in spite of ill-usage, admit not this man to be my enemy, but he will not let me alone, though I let him; when he opposes me in contests with other men, and will now get up and ask you to exclude me from the common protection of the laws; can it be doubted that he has become offensive and more powerful than is good for us all? Besides, men of Athens—Eubulus was present and sitting in the theatre, when the people pronounced sentence on Midias; yet, though he was called upon by name, and the defendant urgently entreated him, as you know, he never stood up. If he thought the plaint preferred without a cause, then was the time surely for a friend to speak in his defence: if he refused then because he believed him guilty, yet will ask you to acquit him now because he has himself quarrelled with me, it is not for your honour to grant such a request. I would have no person in a democracy so great, that his support should cause one man to be insulted and another to escape punishment. If you desire to strike a blow at me, Eubulus, though by the Gods I don't know why, you are a statesman and a man of power; bring me to justice in any way you please according to law; but don't deprive me of redress for the unlawful outrages which I have suffered. If you are unable to reach me in this way, it may be some proof of my innocence, that, when you find it easy to accuse others, you have no ground of accusation against me.

I have heard that Philippides and Mnesarchides and Diotimus of Euonymia and others like them, rich men and trierarchs, will earnestly entreat you to pardon him, and ask it as a favour to themselves. I would not say a word to you in disparagement of those persons; I should be mad to do so: but I will mention what, when they prefer this request, ought to be passing in your minds. Consider, men of the

[1] Eubulus, to whom he points in the court. The quarrel, says Ulpian, was caused by the affair of Aristarchus. See ante, page 100.

jury: should these persons—(Heaven forbid it should occur, nor ever will it!)—but should they become masters of the government with Midias and the like of him, and should any one of you, you the commons and people's men, offend any of these persons, (not as grossly as Midias has me, but in some other way,) and be brought into a court composed of them, what pity or mercy would he obtain, think ye? They'd be likely to show him favour, wouldn't they?—or to listen to a petition from one of the multitude, and not say at once,[1] "The scurvy rascal! he to insult one! he to be independent! a fellow that should be content if one lets him live!" Towards people who would thus treat you, O Athenians, let not your own feelings be any different: have respect, not for their riches and reputation, but for yourselves. These men have

[1] Spalding very appositely quotes the language which Livy (iv. 3) puts in the mouth of Canuleius the tribune—"Ecquid sentitis in quanto contemptu vivatis? Lucis vobis hujus partem, si liceat, adimant. Quod spiratis, quod vocem mittitis, quod formas hominum habetis, indignantur." Nor can we fail to be reminded of the fierce and scornful expressions of the Shakspearian Coriolanus: for example, in Act III. Sc. 1:—

For the mutable rank-scented many, let them
Regard me, as I do not flatter, and
Therein behold themselves: I say again,
In soothing them we nourish 'gainst our senate
The cockle of rebellion, insolence, sedition,
Which we ourselves have plough'd for, sow'd, and scatter'd,
By mingling them with us, the honour'd number;
Who lack not virtue, no, nor power, but that
Which they have given to beggars.

Ibid. Sc. 2:—

I muse my mother
Does not approve me further, who was wont
To call them woollen vassals, things created
To buy and sell with groats.

Ibid. Sc. 3:—

You common cry of curs, whose breath I hate,
As reek o' the rotten fens, whose loves I prize
As the dead carcasses of unburied men, &c.

bearing out what is said of him in Act II. Sc. 1:—

"He seeks their hate with greater devotion than they can render it him, and leaves nothing undone that may fully discover him their opposite. Now to seem to affect the malice and displeasure of the people is as bad as that which he dislikes, to flatter them for their love."

See this Oration, ante, pp. 111, 118, 126.

many good things, which no one prevents their enjoying; then don't let them deprive us of that security, which the laws give us for a common property. It will be no injustice or hardship to Midias, to possess as much as the bulk of you whom he insults and calls beggars, and to be stripped of that superfluity[1] which excites him to be insolent. And surely these persons are not justified in asking such things of you—"Do not decide according to the laws, men of the jury: do not give redress to a party who has been deeply injured: do not regard your oaths: grant this as a favour to us." Such, if they ask anything for the defendant, will be the substance of what they ask, though not precisely in those words. However, if they are friends, and think it hard that Midias should not be rich, they are exceedingly rich themselves, I am happy to say; let them give him money of their own, that you may vote conscientiously, as you were sworn to do when you entered the jury-box, and that they may oblige their friend at their own cost, not at the expense of your honour. If they have money and will not sacrifice it, how can it be proper for you to sacrifice your oath?

Many rich men, O Athenians, banded in league together, and having got by their affluence to be persons of consideration, will come forward to solicit you. Do not, O Athenians, abandon me to any of them; but as they will all be zealous for their private interests and for the defendant, be you zealous for yourselves and for the laws and for me who have sought your protection, and preserve the feelings which animate you now. If at the time of preferring my plaint, O Athenians, the people on hearing the facts had acquitted Midias, it would not have been equally hard; for the charge might have been untrue, or not have amounted to a contempt of the festival; one might have consoled oneself with some such reflexions.[2] But now it would be the hardest thing in

[1] I follow Buttmann and Pabst in reading περιόντα. Schaefer thinks this would be a mere redundancy, and prefers περιϊόντα, because it adds to the sense, περιϊόντ' ὑβρίζειν being equivalent to ὑβρίζειν τὸν τυχόντα. Quære, is not the position of the word against him?

[2] More literally: "One might have had the idea that the offences had never been committed, or that they were not a contempt of the festival, or many other reflexions to console oneself." Μὴ γεγενῆσθαι is equivalent to τὸ μὴ γεγενῆσθαι. When Schaefer says that τις is not referable to the orator, he is right in point of form only; for there can be no

the world upon me, if you, who at the time of the offence were so wrathful, so bitter, so exasperated, that, when Neoptolemus and Mnesarchides and Philippides and some of these immensely rich men were supplicating me and yourselves, you shouted that he must not be let off; and when Blepæus the banker came up to me, you made such an outcry, (just as if I was going to take money,) that for fear of your clamour, O Athenians, I let go my mantle and was almost naked in my tunic,[1] trying to get away from him pulling me; and when you met me afterwards—"Mind that you prosecute the scoundrel, and don't make it up; the Athenians will have an eye to what you do"—these were your expressions: and yet after the thing has been voted to be an outrage, and they that gave judgment gave it sitting in a temple, and I have remained firm and not abandoned either your cause or my own, you are to acquit him notwithstanding! Never do such a thing! Every kind of baseness would be involved in it. And I deserve not to be so treated; how can I, O Athenians, when I bring to trial a man who is notoriously an outrageous bully, who has grossly misconducted himself at a festal meeting, and who has made not you only, but all the Greeks who were

doubt that really refers to himself. When he says, "the untruth of the charges might have been a consoling reflexion," he means to say, "the people's disbelief in the truth of the charges might have been," &c.; but the sentence is too brief to express that distinctly. Auger renders it: "On pensera me serois-je dit, qu'il n'y a pas eu d'insulte réelle, que la fête n'a pas été violée; enfin j'aurois eu alors mille raisons de me consoler." Pabst: *weil man sich dann damit beruhigen könnte, dass etwa das Angegebene gar nicht geschehen sey, oder dass die Unthaten nicht das Fest verletzt hätten, und vieles Andere.*

[1] The common articles of men's dress at Athens were the χιτὼν and the ἱμάτιον. The former was a tunic or shirt of woollen material, without sleeves generally, and reaching not quite down to the knee. The latter was a square cloak or mantle, which was thrown first over the left shoulder, then brought round the back to the right shoulder, and again folded over the left. It usually reached a little below the knee. To wear it of greater length was considered a mark of pride. (See Vol. II. p. 215.)

Either of these garments might be worn without the other. Persons whose means were very small, or who affected severity in their mode of living, contented themselves with one. Thus Socrates wore the cloak without the tunic. Women only wore an interior shirt or chemise under the tunic.

For further information on this subject, the reader is referred to Becker's Charicles, Excursus I. to Scene XI.

staying at Athens, witnesses of his insolence? The people heard what he had done: what then? they voted him guilty, and delivered him over to you. It is impossible therefore that your judgment should be concealed or remain a secret, or that no inquiry should be made how you decided when the case came before you. No; if you punish him, it will be thought that you are wise and honourable men and haters of iniquity; if you let him off, some unworthy motive, it will be said, has prevailed over you. For he is not tried on a political charge, or like Aristophon, who stopped the prosecution by giving up the crowns,[1] but because he has committed a personal outrage and cannot possibly repair what he has done. Under these circumstances, is it better to punish him now or another time? I should think now; for the trial and the offences for which he is tried concern the public.

Besides, it was not me alone, men of Athens, that he meant to beat or insult in doing what he did then, but all who may be supposed less able than I am to obtain satisfaction for their wrongs. If you did not all receive blows or affronts in the performance of choragic duties, you must be aware that you were not all choir-masters together, and that no man single-handed ever could bully you all at once. But when any injured party fails to obtain satisfaction, each of you should expect that he will be the next to suffer wrong; nor should you be indifferent to such things, nor wait till they fall upon yourselves, but take the earliest possible precaution against them. Midias hates me perhaps, and some one else hates each of you. Would you allow those who hate you to have the power of doing, each to the object of his hatred, what Midias has done to me? I should imagine not. Then don't leave me, O Athenians, to the defendant's mercy. Only see. Presently, when the court rises, every one of you sooner or later will return home, not heeding nor caring nor troubling himself in the least, whether a friend or an enemy will cross his path, whether a big or a little man, a strong or a weak, or anything of the kind. Wherefore so? Because he is sure in his mind

[1] This man, says Ulpian, had kept in his hands certain tithes, out of which some crowns had to be purchased for an offering to Pallas. Having been prosecuted for this by Eubulus, before the day came for his trial, he brought the crowns into the temple, and obtained a stay of proceedings.

of this, having a firm reliance upon the constitution, that no one will lay hands upon him or assault or strike him. Thus walking in security yourselves, will you leave me not equally secured? And what can induce me to survive such treatment, if you refuse to assist me? "Oh, never fear," it may be said; "you'll not be insulted again." But suppose I am: will you punish then, after acquitting now? Do not abandon me or yourselves or the laws, O Athenians. If you will only look and consider, by what it is that you the jurors of the day are powerful and masters of everything in the state, whether the state empanels two hundred jurors or a thousand or any number whatsoever, you will find it is not by your being the only citizens arrayed in arms, nor because the jurors are the most able-bodied and robust men, nor by your being the youngest in age or anything of that sort, but because the laws are powerful. And what is the power of the laws? If any of you is injured and cries out, will they run up and assist him? No; they are but written words, and cannot do this. In what then consists their strength? In your enforcing, in your making them effectual always for the benefit of those who need them. Thus are the laws powerful by you, and you by the laws: you should defend them therefore just the same as you would defend yourselves against injustice, and regard the wrongs of the laws, by whomsoever they are found to be committed, as matters of public concern; and there should be no services, no compassion, no influence, no contrivance, nothing whatsoever by which a man who has transgressed the laws can escape the penalty.

You that were spectators at the Dionysia hissed and hooted the defendant when he entered the theatre; so that you gave tokens of abhorrence before you had heard a syllable about him from me. Were you angry then before the thing was proved?—did you invite the aggrieved party to seek justice?—did you clap your hands when I arraigned him in the assembly?—yet, when the case against him is established, and the people sitting in a temple have precondemned him, and all the other performances of the miscreant have been brought under review, and you are appointed to be his judges, and it rests with you to settle everything by a single verdict, will you now hesitate to give me redress, to satisfy the people, to admonish other men, and, that you may live yourselves in

perfect safety for the future, to make this man an example to all?

For all the reasons which have been urged, and especially for the sake of the God, whose festival he is convicted of profaning, give that verdict which is just and righteous, and punish the defendant.

THE ORATION AGAINST ANDROTION.

THE ARGUMENT.

The Council of Five Hundred was required every year to build some new ships of war, and, if they failed to perform this duty, they were forbidden by a special law to ask for the customary reward of a crown, when they went out of office. It happened somewhere about the year B. C. 356, that the treasurer of the shipbuilders ran away with a sum of two talents and a half, and the Council, for want of funds, was not able to provide a single galley for the public service. Notwithstanding this, at the close of their official year Androtion moved a decree in their favour, commending them for good conduct, and awarding them a crown as usual. The decree was passed, but he was indicted and brought to trial for it by two of his personal enemies, Euctemon and Diodorus. Four charges were preferred against him: first, that he had transgressed the above-mentioned law; secondly, that his motion was not founded upon a previous resolution of the Council; thirdly, that he had been guilty of infamous practices, which disabled him to speak in public; fourthly, that he laboured under the like disability for having neglected to pay a state-debt due from his father at his decease. Euctemon, as the elder of the two prosecutors, opened the case to the jury: Diodorus followed with this speech, composed for him by Demosthenes.

The orator commences by declaring the motives which induced him to prosecute. He had been deeply injured by Androtion: this, according to the opinions of his countrymen, fully justified him in coming forward as a public accuser. He then proceeds to deal with those parts of the case which had not been handled so fully by Euctemon, and especially to meet certain defences which he expected Androtion would set up. It was clear, he contends, that a constitutional principle was violated in moving a decree without the previous sanction of the Council, although there might have been some precedents for such a course. It was equally clear, that, as the Council were forbidden to ask for a crown after neglecting the duty of shipbuilding, it was illegal for any other person to move that they should be rewarded with a crown. The law which required ships to be provided was one of the greatest importance; for the safety of the commonwealth depended on her navy. It would be said, that the treasurer who ran away with the fund, and not the Council, was to blame; but it was dangerous to admit such excuses, and at any rate the law was imperative, that, if there were no ships built, there should be no crown. If it seemed hard, that five hundred councillors should suffer for the negligence or misconduct of a few persons,

it would be a good lesson to them not to be guided hereafter by bad advisers. With respect to the personal charges against Androtion, he would object, that they ought not to be brought forward now, but should rather be made the subject of a distinct prosecution. The law however allowed more than one method of punishing such crimes; and wisely so; for it was dangerous to the constitution that men of infamous lives should obtain a hearing of the people. He would say perhaps, that he was persecuted because he made himself unpopular as a collector of taxes. Any such observations would be wholly irrelevant to the question before the court. The fact was however, that he had got himself appointed a commissioner for collecting arrears of property tax, and invested for that purpose with arbitrary powers, which he had exercised with unnecessary harshness, entering and searching men's houses, insulting them and throwing them into prison. By such conduct he had rendered himself odious, and not by the performance of his duty as collector; for the arrears which he had enforced the payment of were very small. The whole thing was a job of his own. Neither as a tax-collector nor in any other way had he ever rendered or sought to render a service to the state. His whole political career had been vicious and corrupt. The orator refers to one special instance, in which Androtion had contrived to rob the public by the melting down of some sacred crowns, and, after dwelling for a while on the particulars of that case, concludes with an appeal to the Athenians to choose worthier and better ministers in future.

It is said that Demosthenes laboured with great care in the composition of this speech, knowing that he was opposed to an able and experienced orator, who had been a pupil of Isocrates. We find in it much of the subtlety and elegance which we have remarked in the Leptinea.

As Euctemon having been wronged by Androtion, men of the jury, determines at the same time to seek justice for the commonwealth and satisfaction on his own account, I will endeavour to do the same, if I possibly can. It so happens that, while Euctemon has suffered cruel outrages in violation of all the laws, they do not equal the troubles which Androtion has caused me. The plot against my friend related to money and an unjust expulsion from Athens: but I should have been excluded from all society whatsoever, if the charges got up against me by the defendant had found credence with you. He accused me of what any one would have been afraid to mention, who did not resemble him, namely, that I had killed my own father; and having got up an indictment for impiety, not against me but against my uncle, charging as impiety that he had associated with me after an act of parricide, he put me upon a defence, in which if I had failed by

any chance, I should have suffered the most cruel of injuries by his contrivance. For what friend or what stranger would have liked to meet me afterwards? what city would have allowed to be anywhere in its precincts a person supposed to be guilty of such impiety? None. I without difficulty cleared myself of the charge on my trial before you: in fact, the defendant did not obtain a fifth part of the votes. And I will endeavour with your assistance, both now and at all times hereafter, to avenge myself upon him.

So much for personal matters, though indeed I could say a good deal more. As to the questions upon which you are now to give your verdict, and as to the defendant's public acts by which he has done you no little damage, I will endeavour to state briefly what it seemed to me that Euctemon had omitted, and what it is better you should hear. If I saw that Androtion had any honest defence upon the present indictment, I would not have mentioned such matters: but I am quite sure he can have nothing fair or straightforward to urge, but will try to catch your verdict by artful arguments dressed up to meet the various charges. For he is a well-trained speaker, O Athenians, and all his life has had nothing else to do. Therefore, that he may not cajole you—that he may not persuade you to vote contrary to your oaths, and to acquit a man whom on many accounts you ought to punish—attend to what I shall say. Having heard me, you will be provided with a fit answer to every plea that he can urge.

He has one argument, which he thinks very clever, about the omission of a resolution of Council. There is a law, he says, that, if the Council appear to have performed their duties worthily of reward, the people shall give them their reward. The question, says he, was put by the chairman; the people voted; it was carried in the affirmative. There is no need, says he, for a previous resolution of Council here; for what took place was according to law. I think quite differently, and I imagine you will agree with me, that resolutions of Council are only to be brought up in cases where the laws permit; for upon a question that is not lawfully open surely nothing at all ought to be proposed. He will say however, that all the Councils which have ever had rewards from you have received them in this manner, and that no previous

resolution of Council has ever been passed for any. I believe that what he asserts is untrue; indeed I am sure of it; but were it ever so true, when the law orders differently, we ought not surely, because an error has frequently been committed before, to persist in it now, but on the contrary, we should begin with you first and compel people to do as the law directs. Don't you tell us then about the frequency of the practice, but show that the practice is right. If the laws have been violated formerly and you have followed the precedent, you ought not to be acquitted on that account, but to be condemned all the more. For as, if any of the former parties had been convicted, you would not have moved this decree, so, if you are punished now, no one will move it again.[1]

[1] This argument is repeated in partly the same words in the Aristocratea, p. 653. It is cited with praise by Quintilian, v. 14, and Aulus Gellius, x. 19. It touches a question which frequently arises, both in courts of judicature and elsewhere, how far and in what manner it is right to punish people for unlawful or vicious practices, which have long been tolerated or connived at. It is urged on the one hand, "how hard it would be, that a man should suffer for doing what hundreds had done before him with impunity;" to which it is replied, "we must begin with some one; it is necessary to make an example; else the thing will go on for ever;" and the like.

Thus we find Cicero reasoning on the subject. In Verrem, Act II. Lib. iii. 88:—

"Quid igitur dicet? Fecisse alios. Quid est hoc? Utrum crimini defensio, an comitatus exilio quæritur? Tu in hâc republicâ, atque in hâc hominum libidine et (ut adhuc habuit se status judiciorum) etiam licentiâ, non ex jure, non ex æquitate, non ex lege, non ex eo quod oportuerit, non ex eo quod licuerit, sed ex eo quod aliquis fecerit, id quod reprehenditur recte factum esse defendes? . . . . . . Illud, in quo te gravissime accusavi, quod ob judicandam rem pecuniam accepisses, eâdem istâ ratione defendes, fecisse alios? Ut ego assentiar orationi, defensionem tamen non probabo. Potius enim, te damnato, ceteris angustior locus improbitatis defendendæ relinquatur, quam, te absoluto, alii quod audacissime fecerunt recte fecisse existimentur."

Again, ibid, ss. 89, 90:—

"Desinite dubitare, utrum sit utilius, propter multos improbos uni parcere, an unius improbi supplicio multorum improbitatem coercere. . . . . . . Quo me igitur, aut ad quæ exempla revocas? Ab illis hominibus qui tum versati sunt in republicâ, cùm et optimi mores erant, et hominum existimatio gravis habebatur, et judicia severa fiebant, ad hanc hominum licentiam et libidinem me abducis? Et in quos aliquid exempli populus Romanus statui putat oportere, ab iis tu defensionis exempla quæris?" [It

As to the law which expressly forbids the Council to ask for their reward without having built the ships, it is worth while to hear the defence which he will set up, and, by what he will venture to argue, to see what an impudent person he is. "The law," says he, "forbids the Council to ask for their reward, if they have built no galleys; I concede. But it nowhere prevents the people granting a reward:" he says. "If I gave it at their request, I have moved contrary to the law: but if I have made no mention of the ships in the whole of my decree, and assign some other reasons for awarding a crown to the Council, how have I moved contrary to the law?" To this it is not difficult for you to make a proper reply—first, that the committee of Council and the chairman who puts these things to the vote asked the question, and divided the assembly on it—"who thinks that the Council

It is worth while also to compare the language of the Duke in Measure for Measure, Act I. Sc. 4:—

DUKE.

We have strict statutes and most biting laws,
(The needful bits and curbs for headstrong steeds,)
Which for these fourteen years we have let sleep;
Even like an o'ergrown lion in a cave,
That goes not out to prey: Now, as fond fathers,
Having tied up the threatening twigs of birch,
Only to stick it in their children's sight,
Becomes more mocked than feared, so our decrees
Dead to infliction, to themselves are dead;
And liberty plucks justice by the nose;
The baby beats the nurse, and quite athwart
Goes all decorum.

FRIAR.

It rested in your Grace
To unloose this tied-up justice when you pleased:
And it in you more dreadful would have seem'd
Than in Lord Angelo.

DUKE.

I do fear, too dreadful:
Sith 'twas my fault to give the people scope,
'Twould be my tyranny to strike and gall them
For what I bid them do: For we bid this be done,
When evil deeds have their permissive pass,
And not the punishment. Therefore indeed, my father
I have on Angelo imposed the office;
Who may, in the ambush of my name, strike home.
And yet my nature never in the sight,
To do it slander.

have deserved reward for their administration, and who thinks not?"—but surely men who were not asking or demanding anything should not have put the question at all. Besides, there were charges preferred by Midias and some others against the Council, upon which the members besought you not to deprive them of their recompense. And this there is no necessity for you jurors to be told by me; for you were in the assembly yourselves and know that it occurred. When therefore he denies that the Council asked for a crown, have this answer for him. But I will show you also, that the law forbids the people to grant one, if the Council have built no ships. The statute, O Athenians, was expressed in this way, making it unlawful for the Council without having built galleys to ask for their reward, that it might be impossible for the people even to be seduced or misled. For the legislator thought it best not to let the thing depend upon the ability of speakers. but that whatever he could devise that was just and beneficial to the people should be ordained by law. Have you not built the galleys? Then don't ask for your reward? When it forbids to ask, does it not more strongly prohibit the granting?

It is well also to inquire, O Athenians, how it comes that, although the Council have performed all their other duties creditably and no one has any complaint against them, still, if they have not built galleys, it is unlawful to ask for their reward. You will find that this stringent enactment is for the people's good. For no one, I take it, will dispute, that all which has ever happened to the republic, or which now belongs to her, either of good fortune or the contrary, (that I may avoid words of evil omen,) has proceeded in the one case from the possession, in the other from the want, of a navy. Many examples, ancient as well as modern, might be cited; but let me first take what are familiar to all ears. Those men who built the Propylæa and the Parthenon, and who adorned our other temples with the spoil of the barbarians. in which we all naturally pride ourselves—you have heard of course, that, after they abandoned the city and were shut up in Salamis, by having ships of war they gained a victory at sea, and preserved the commonwealth and all that belonged to them, and conferred signal benefits upon the rest of the Greeks, of which time itself cannot cancel the memory

Well; that is a story of olden days. To come then to what you have all witnessed—You know that lately you carried succours to the Eubœans in three days, and sent away the Thebans under an armistice. Would you have accomplished this so speedily, if you had not had the new galleys which conveyed your troops? It would have been impossible. One could mention many other successes which have attended us through the good condition of the navy. Aye; and how many disasters from its bad condition? Most of them I will pass by: but in the Decelean war, (I will remind you of one old occurrence, which you are all better acquainted with than I am,) although many dreadful misfortunes had happened to our countrymen, they were not reduced to submission until their navy was destroyed. And why speak of things so ancient? In the last war with the Lacedæmonians,[1] when it was thought you would not be able to send off a fleet, you know in what a state the city was: you know that vetches were for sale; but after you had sent it off, you obtained peace on your own terms. When your ships therefore, O Athenians, have such effect in turning the scale either way, you have wisely made this an indispensable condition for the Council's obtaining their reward. For should they discharge all the rest of their duties creditably, and yet fail to construct these, the instruments by which we originally acquired and still preserve all that we have, I mean the galleys, the rest would be of no use: for the safety of the state must first be secured for the people. This man however is so fully persuaded that he has the right to move and propose what he pleases, that although the administration of the Council has been in other respects what you hear, and they have neglected to build the galleys, he has framed a decree to give them their reward.

That this is not a contravention of the law, neither can the defendant assert, nor you be made to believe. I hear however, he will advance a plea of this kind, that the Council is

[1] The war in which Athens and Thebes were united against Sparta, and which (so far as concerned Athens) was terminated by the peace of B.C. 371. The distress which the orator refers to occurred about two years before the peace, when the Athenians had not funds to equip their fleet for the relief of Corcyra. See Xenophon, Hellen. vi. c. 2; Diodorus, xv. 47

not to blame for the ships not having been built, but that the treasurer of the shipbuilders ran away with four talents and a half, and the thing has been a misfortune. In the first place, I am astonished at this very thing, that he should ask you to bestow a crown upon the Council for misfortune: for I imagined that such honours were confined to successful performances. And I have this further observation to make to you—I say, it is not just to contend for both, that the reward has not been given in contravention of law, and that the omission to provide galleys is not the fault of the Council. For if it is proper to reward the Council even without having built any, what need to mention to whom the neglect is attributable? If it is not lawful, why should the Council be rewarded any the more, because he can show that it was owing to this or that person that ships were never built? Besides, it appears to me that such arguments give you an option, whether you think proper to hear pleas and excuses from men who injure you, or to possess ships. For, should you accept this plea of the defendant, it would be manifest to all Councils, that their business is to find out plausible excuses to offer you, not to construct galleys: and the consequence will be, that your money will be spent and you will have no ships. But if, as the law commands and as becomes men upon their oaths, you proceed sternly and strictly to overrule excuses, and let it be seen that you have withheld the reward because the ships have not been built, they will all have your galleys forthcoming, O Athenians, having observed that nothing has so much influence with you as the law. That no other party however is to blame for the omission of the shipbuilding, I will show you clearly: for the Council, by infringing this law, voted themselves guilty.[1]

[1] Ἐχειροτόνησεν αὐτήν. sc. αἰτίαν. The Council, instead of procuring Androtion to move an unlawful decree in their favour, should rather have declined the honour of a crown under the circumstances; for, though they were not implicated in the fraud of the treasurer, still the public loss was a misfortune for which they were in some measure responsible. The anxiety which they showed to clear their character betrayed a consciousness that they were in fault.

Such is the best explanation which I can devise; but I am rather inclined to think the passage hopelessly corrupt. Pabst, following

Again, as to the law concerning impudicity, he pretends to say that we insult and slander him unfairly: and he says that, if we had any confidence in the truth of our charges, we ought to have appeared against him before the Judges, so as to risk a thousand drachms in case we were thought to be false accusers; but that now we are imposing on the Court by idle accusation and abuse, and troubling you with matters over which you have no jurisdiction. I would have you reflect above all things, that accusation and abuse are very different from proof. It is accusation simply, when a man makes a bare statement without furnishing any grounds for believing him: it is proof, when a man at the same time demonstrates the truth of what he says. Those who prove a case must either give circumstantial evidence to make you believe it, or offer reasonable arguments, or produce witnesses: for of some things it is impossible to give you ocular demonstration; but whenever one can bring any of these tests, you rightly consider that you have sufficient proof of the truth. We make out our charges not by probable arguments, not

Schaefer's interpretation, which however scarcely satisfies him, renders it thus:—

Er trug nämlich mit Aufhebung jenes Gesetzes selbst auf Verleihung des Ehrengeschenkes für sich an.

Auger remodels the text thus,—διὰ τοῦτον ἐχειροτόνησεν αὑτῇ τὸν στέφανον, which he translates:—

"Les sénateurs se sont servis d'Androtion pour s'adjuger à eux-mêmes une couronne, quoiqu'ils n'eussent pas éxécuté la loi."

And he appends the following note:—

"C'est-à-dire, puisqu'ils se sont servis d'un homme tel qu'Androtion, c'est une preuve qu'ils n'ont pas pris les précautions nécessaires pour mettre en sûreté les fonds qui leur etoient rémis pour la construction des vaisseaux exigés; ils se sont servis d'un homme qui leur a fait donner leur confiance à des fripons, ses pareils: il y a par conséquent de leur faute, si l'intendant des ouvriers a emporté la caisse. Voilà le sens qu'on peut tirer de cet endroit, que j'ai traduit en faisant quelques additions au texte. Il me paroît conforme, à ce que dit un peu plus bas Démosthène, en parlant du même Androtion; *c'est à cause de tels gens,* dit-il, *que les sénateurs se sont comportés de façon à ne pas mériter de couronne.* Si néanmoins on le trouvoit forcé, on pourroit traduire autrement, avec quelques changements dans le grec, et une légère addition dans le françois: *je me contente de cette raison simple, mais évidente: le sénat enfreint la loi, en nommant seul, sans l'agrément du peuple, l'intendant des ouvriers.* Et alors il faut dire, avec Ulpien, que cet intendant, comme en général tous ceux qui avoient le maniement des deniers publics, οἱ ταμίαι, devoient être nommés par le peuple."

by circumstantial evidence, but by a witness from whom the defendant can most readily obtain satisfaction, a man producing a paper in which the acts of this man's life are stated, and who has made himself responsible for his testimony When therefore he says that these charges are mere accusation and abuse, reply to him, that it is proof, and that his own proceeding is accusation and abuse merely. When he says that we ought to have denounced him before the Judges, reply to him, that we mean to do that, but that we are now also properly referring to the law. If, Androtion, we were advancing this charge against you upon any other kind of trial, you might justly have complained: but when you are upon your trial for proposing an illegal measure, and the laws do not allow persons who have lived such lives to move even what is legal, and we show that you have not only moved an unlawful decree but led an unlawful life, how can it be improper to refer to a law by means of which your criminality is proved?

And you should be informed moreover, that Solon, who enacted these laws and most of the rest, a lawgiver of a different kind from the defendant, gave to all who require satisfaction for injuries not one way only, but many ways of proceeding against the wrong-doers. He knew, I take it, that for all persons in the state to be equal, all clever or bold or well-behaved, would be impossible. If he should so frame his laws that only the well-behaved could obtain justice, he perceived that many rogues would remain unpunished; if so as to help the bold and eloquent only, he saw that ordinary men would not be able to get justice like them: and his opinion was that no man should be debarred from obtaining justice in the way that best suited his capacity. How then was that to be? By allowing many methods of proceeding at law against delinquents: as for theft.[1]—Are you able-bodied and confident in yourself? Take

[1] We learn from this passage, as well as from other sources, that at Athens the owner of stolen goods had the option of proceeding against the thief either civilly or criminally, contrary to the practice of our law, by which the civil injury is merged in the felony, and the owner can only recover his goods by prosecuting the thief to conviction. The principle of the English law is plain enough. Theft is a crime against society, and the good of society requires that it should be dealt with as

the thief to prison: but you risk the penalty of a thousand drachms. Are you not so strong? Take the Archons with you; they will do it. Are you afraid of this too? Indict him. Do you distrust yourself, and are you too poor to pay a thousand drachms? Sue him for larceny before the Arbitrator, and you will run no risk. None of these courses is the same. For impiety in like manner you may take to prison, indict, sue before the Eumolpids, lay an information before the King.[1] And in all other cases pretty nearly in the same way. Now if any one, instead of contending that he was not a malefactor, or not guilty of impiety, or whatever else he was tried for, should seek to obtain his acquittal on such grounds as these—in case he were taken up, that you might have sued him before an arbitrator or ought to have

such: the private advantage of the individual is postponed to the necessities of public justice; and therefore it is not lawful even to compromise the affair with the thief. This principle however is not extended to misdemeanours of the same character with theft, such as embezzlement, and obtaining goods under false pretences, where the injured party may generally waive the criminal part of the offence, and recover his debt or damages in an action.

Under the Athenian law the party robbed might bring his action either before an arbitrator or before a jury, and recover the stolen article, together with damages twice its value, or damages ten times its value if the article itself could not be restored. The jury might at the same time order the thief to be put in the stocks for five days; and their verdict against him was attended with disfranchisement. Any Athenian might proceed to indict him, if the injured party declined to do so. Stealing anything in the night-time, or from the gymnasia, or stealing in the daytime to a greater amount than fifty drachms, or from the baths or the harbour to a greater amount than ten drachms, was punishable with death. When the thief was caught in the act of stealing, the owner of the goods might carry him off at once to the Eleven, and have him sent to prison; or, if he was afraid to do it himself, he might bring the magistrates to the spot, and get them to do it for him, as mentioned in the text.

See Appendix IX.; and Meier and Schömann, Att. Proc. pp. 229, 356.

[1] As to the jurisdiction of the King-Archon in cases of impiety, see Appendix IV. The Eumolpidæ were an ancient priestly family, from whom was chosen the Hierophant of the Eleusinian Mysteries. (See Appendix VI.) They were the interpreters of a traditionary ceremonial law, in relation to which they were invested with some sort of judicial power. Whether it was subordinate to that of the King, or independent, or in what manner it was exercised, is not known. See Meier and Schömann, Att. Proc. 117, 304.

indicted him; in case he were defending an action before an arbitrator, that you should have taken him up, so that you might have risked a thousand drachms—it would be ridiculous surely. For a man who is innocent ought not to make any objection to the mode of punishment, but to show that he is innocent. In like manner, Androtion, if you move decrees after having committed infamous crime, don't imagine that you are to escape punishment because it is competent for us also to denounce you before the Judges: but either show that you are not guilty, or submit to the penalty of having moved when your character was such; for you have no right to do so. If we forbear to prosecute you in all the ways which the laws allow, be thankful to us for those which we omit; don't on that account seek to escape punishment altogether.

It is worth your while, O Athenians, to look into the character of Solon who passed the law, and to see what forethought he took for the constitution in all the laws that he framed, and how much more anxious he was about that than about the immediate subject of any law that he was passing. One may see this in many ways, but especially from this law which forbids persons guilty of impudicity either to speak or propose decrees. For he saw that, although the great body of the people are at liberty to speak, they do not speak: he considered therefore that this was no hardship; and, had his object been to punish these men, he might have enacted many severer penalties. But he was not anxious about that: he imposed the disabilities I speak of on behalf of you and the constitution. For he knew, he knew, that to men of infamous lives that government is the most unfavourable, in which all people are at liberty to publish their shame. What is this? A democracy. He thought then it would be dangerous, if there should ever happen to be at the same time a large number of men, who were bold and clever speakers, but infected with these infamous crimes: for the people might under their influence commit many errors, and they might either attempt to overthrow the popular government entirely, (for in oligarchies, though men have led still more disgraceful lives than Androtion, it is not allowable to speak ill of the rulers,) or they might corrupt the people as much as they could, to make them as like as possible to themselves

Therefore he forbade persons of this description to take any part in the public counsels, for fear the people should be betrayed into error. Notwithstanding which, this honourable man not only thought proper to make speeches and motions when he was under disability, but even to make illegal ones.

With respect to the law by which, as his father owed money to the state and had never paid it, he is not permitted to speak or to frame decrees, this will be the proper answer for you to make, if he says that we ought to lay an information against him. We shall do so hereafter—decidedly not now, Androtion, when you are to render an account of other crimes which you have committed—but at the fitting time according to the law. Now however we show, that the law does not permit you to make even such motions as are allowable to other citizens. Prove therefore that your father was not indebted, or that he got out of prison not by running away, but by satisfying the debt. If you are unable to prove this, you have moved a decree when you had no right to do so; for the law makes you the inheritor of your father's disfranchisement, and being disfranchised you had no business to speak or to move.

As to the laws then which we have cited against him,[1] if he should strive to deceive and lead you astray, you must answer him in the manner that I have explained.

He has arguments also upon other points, which are admirably contrived for your deception; and it is better that you should be informed of them beforehand. He has one to this effect, that you should not deprive of their reward or involve in disgrace five hundred Athenian citizens: "they are upon their trial," he says, "not I." Now, if you were about to deprive them only, and to confer no benefit upon the commonwealth, I would not have had you trouble yourselves much about it: but if by doing so you will encourage more than ten thousand other citizens to become better men, how much more to your credit is it to make so many persons honest, than to oblige five hundred unjustly. That the affair however does not concern the whole Council, but only

[1] The laws which Androtion violated by his decree, which we have copied out and exhibited in court in juxtaposition with his decree. (See Volume II. p. 46, note 1.)

Pabst renders it here: *die Gesetze welche wir angeführt haben.*

some members (who have caused the mischief) and Androtion, I am able to show you. To whom can it be a disgrace, when he is silent and frames no resolution, and perhaps rarely comes into the Council-chamber, that the Council don't get their crown? To no man surely. The shame is his, that frames resolutions and takes a part in public business and persuades the Council to do what he pleases: for it is through such men that the Council have not deserved a crown for their administration. Granting however most fully that the whole Council are now upon their trial, see how much more it is for your interest to convict them than not to convict. If you acquit them, the Council-chamber will be ruled by the speakers; if you convict them, it will be ruled by the ordinary members: for the majority, having seen this Council deprived of their crown through the bad conduct of the speakers, will not leave the business in their hands, but advise themselves what is for the best. And if this should take place, and you should be quit of the old set of orators, you will see all things going on as they should do, O Athenians. On this account then, if for nothing else, you should pass sentence of conviction.

Let me tell you another thing which ought not to escape you. Perhaps Philip and Antigenes will get up and plead for the Council; and also the checking-clerk[1] and some others, who with the defendant used to manage that chamber, and who are the authors of these malpractices. Now I should inform you, that these men, though the pretext of their advocacy is to defend the Council, will in reality fight their own battle, to help out the account which they must render of their conduct. For thus the matter stands. If you acquit the defendant on this indictment, they are all released, and none can ever be brought to justice: for who could find a verdict against them after your crowning the Council of whom they had the guidance? If you convict him, in the first place you will have pronounced a verdict in accordance with your oaths; in the next place, when you get these men at their audits, whomsoever you believe to be guilty, you will

[1] This officer kept a record of the monies paid to the Council, and in every Prytany he laid the accounts of the revenue before the popular Assembly. He therefore had to pass his audit when he went out of office. (See Vol. II. Appendix IV. p. 338.)

punish; whom not guilty, you will then discharge. Do not therefore give ear to them as if they were speaking on behalf of the Council and the people, but regard them with indignation as persons deceitfully pleading their own cause.

I believe also that Archias of Cholargus, who was a councillor last year, will, on the strength of his good character, petition and plead for them. You ought, I think, when you hear Archias, to do something of this sort—ask him whether he thinks what the Council are charged with is creditable or discreditable: if he says creditable, you must listen to him no more as a well-principled man; if discreditable, ask him, why he allowed such conduct, when he pretends to be a man of good principle. And if he says that he opposed it, but that no one hearkened to him, surely it is strange that he should now defend a Council which would not hearken to his good advice: if he admits that he was silent, is it not a crime, that he should have neglected his opportunity of dissuading people from evil designs, and should now venture to say that men who have done such mischief deserve a crown?

Nor will he forbear to urge, I expect, that all this has happened to him on account of the taxes which he collected on your behalf (so he will tell you) from a few persons who were not ashamed to be largely in arrear.[1] And he will accuse (it will be easy enough) those men who did not pay

[1] Böckh, in his Public Economy of Athens (Transl. vol. ii. p. 304), cites this passage to prove that other citizens besides the select twelve hundred were assessed to the property-tax:

"It is probable that many others besides the twelve hundred paid taxes, who, although their property was less considerable, were assessed in the total valuation; and this supposition receives considerable support from a fact mentioned in an oration of Demosthenes. Androtion was employed to collect some outstanding taxes which belonged to the impost laid on in the archonship of Nausinicus, and he collected seven out of fourteen talents; they were however small sums, not one amounting to a mina, as Demosthenes says, but a little more than seventy drachms from one person, and from another thirty-four. That these were the arrears of payments which had been made by instalments, is very improbable: we are nowhere informed that the payments were ever made in this manner; nor is it indeed credible, since the necessities of the state required prompt payment. We should not therefore be justified in assuming that such a liberty was granted by the state; and even if it did exist, what rich man would have remained thirty-four drachms in debt? It follows therefore that these were taxes due from persons of small fortune, who from their inability to

their property-tax, and will say that, if you convict him, all people may refuse to pay taxes with impunity. Now do reflect, men of Athens: in the first place, you are not sworn to decide upon these matters, but whether he moved his decree according to the laws: in the next place, it is monstrous in one who complains of others wronging the state, to ask that he should not be punished for his own more grievous wrong-doings; for surely it is a far more grievous offence to frame illegal decrees than not to pay your property-tax. But were it clear that upon this man's conviction no one would pay taxes or be willing to collect them, even then you ought not to acquit him, as I will make you see. Upon all the taxes from the time of Nausinicus, perhaps on three hundred talents or a little more, there is a deficiency of fourteen talents, of which the defendant levied seven; I will assume however that he levied the whole. Well: you don't need Androtion for those that pay willingly, but for the defaulters. You have therefore to consider, whether this is the value at which you estimate the constitution and the established laws and the observance of your oaths: for should you let the defendant off, when he has so clearly made an illegal motion, it will be universally thought that you have preferred this money to the laws and to the observance of your oaths: and yet, if any one offered you such a sum out of his own pocket, it were not worth your acceptance, much less on the terms that you should levy it from others. When therefore he urges this, remember your oaths and consider, that upon this indictment the question is not about the collection of taxes, but whether your laws are to be in force.

I have thus shown, in what manner he will attempt to mislead you by diverting your attention from the law, and what you have to keep in mind to prevent his so doing. I

pay them, were obliged to submit to be insultingly treated by Androtion, and to be unjustly thrown into prison; and since Androtion collected seven talents, and as no one paid a whole mina, he must have collected taxes from at least four or five hundred persons. Now if we reckon that the other seven talents were in like manner chiefly made up of small sums, which is the only probable assumption, it gives about twelve hundred people whose taxes were in arrear; these however cannot have been the twelve hundred wealthy persons, but citizens of a lower valuation, who paid even such small sums as these with difficulty."

could say much more upon the subject, but as I think I have said enough already, I shall let it pass.

I wish also to examine the political conduct of this worthy fellow, in which it will appear he has stopped short of nothing that is atrocious: for I will show him to be impudent, audacious, thievish, overbearing, anything but fit to be a statesman in a democracy. And first[1] let us inquire into that upon which he most plumes himself, his collection of the debts: without heeding this man's boasts, let us look at the thing as it has really occurred. He said that Euctemon retained your taxes, and undertaking to prove his charge or himself to pay down the money, under this pretence he got you to depose a functionary elected by lot,[2] and so crept into the collection. He harangued you on the occasion, saying, that you had the choice of three things, either to break up your sacred vessels, or to have a new contribution, or to demand payment of those in arrear; and, as you naturally chose to demand payment of those in arrear, and as he had won you by his promises and had a license under the circumstances of the time, he did not think proper either to act under the existing laws, or, if he thought them insufficient, to pass new ones, but moved illegal and shameful decrees in the assembly, by means of which he made a job for himself and has largely plundered you, putting in a clause that the Eleven[3] should accompany him. Attended by them, he led the way to the houses of his fellow-

[1] This passage is repeated with some variations in the speech against Timocrates, p. 750—752.

[2] Euctemon was probably one of the regular officers engaged in the management or collection of the property-tax (ἐπιγραφεῖς or ἐκλογεῖς), who were appointed, like many other functionaries, by lot. See Böckh's Public Economy of Athens, Transl. ii. 211.

[3] The Eleven were an executive and also judicial board, elected annually by lot, one from each tribe. To the ten thus chosen was attached a Secretary, who held an equally responsible situation, and therefore the whole body were called the Eleven. In their executive capacity they were like our sheriffs, having charge of the prison and its inmates, and being entrusted to carry into execution the last sentence of the law. The gaolers and executioners acted as their servants. When torture was inflicted in either civil or criminal cases, it was under their superintendence. They had a summary jurisdiction over certain heinous crimes, such as theft, housebreaking, kidnapping; and upon the confession of the accused, could of their own authority inflict capital punishment. Those who did not confess, they put in prison

citizens. And Euctemon, from whom he said he would get the taxes or himself make them good, he could prove nothing against, but proceeded to get them in from you, as if he had entered upon the task because he was your enemy and not Euctemon's. Don't understand me to say, that payment ought not to be required of the defaulters. It ought: but how? As the law commands, for the good of the rest: that is in accordance with the principles of democracy. You have not been so much benefited, O Athenians, by all these sums being levied in such a way, as you have been damnified by the introduction of such practices into the constitution. If you will only inquire, why men would rather live under a democracy than under an oligarchy, you will find the most obvious reason to be this, that everything is milder in a democracy. I need not say that the defendant has been more outrageous than any oligarchy you like to mention. But let me ask—When have the most atrocious things been done in our commonwealth? You will all say, in the time of the Thirty. Yet then, we are told, no man was deprived of safety, who could conceal himself at home; but we accuse the Thirty, because they unjustly carried men to prison from the market-place. Androtion however surpassed them in brutality; for he, acting as statesman under a popular government, made every man's private house a prison, conducting to your houses the Eleven. What think ye of this, O Athenians—that a poor man, or even a rich one who had been at great expense and perhaps for some reason or other was out of cash, should get over the roof to his neighbour's house or hide himself under a bed, that he might not be caught and dragged to prison, or commit other improprieties, befitting slaves rather than freemen, and be seen so doing by his wife, whom he espoused as a freeman and a citizen of the republic? And what think ye of Androtion being the cause of this, a man who on account of his life and conduct is forbidden to seek justice on his own behalf, much more on behalf of the state? I am sure, if he were asked whether the property or the person is answerable for taxes, he would say the property, if he meant to speak truly; for it is from property that we contribute. Why then,

and brought to trial. They had also a judicial authority upon questions concerning confiscated property. (Meier and Schömann, Att. Proc. 71, &c.; Schömann, Ant. Jur. Publ. 245.)

instead of sequestering lands and houses and scheduling them, why, Androtion, did you imprison and insult members of the commonwealth and the poor resident aliens, whom you have treated with more insolence than your own servants? If you will only consider what is the difference between being a slave and a freeman, you will find this to be the chief distinction, that with slaves the person is responsible for all offences, while freemen, though they commit the most serious offences, can escape personal chastisement; for in most cases we have to get satisfaction from them in money. Androtion however inflicted corporal punishment on people, as if they were bondsmen. And on such base and selfish principles did he act towards you, that, while he allowed his father who was in prison for a public debt to escape without payment or trial, he thought that any other citizen who could not pay taxes out of his own property should be dragged from his house to gaol. Further, as if he was at liberty to do anything he liked, he distrained upon Sinope and Phanostrate, women of the town certainly, but not owing any property-tax. If it be thought that they were fit persons to be harshly treated, this at all events is not a fit thing to happen, that any one should be so exalted by circumstances, as to go to the houses of persons who owe nothing, and carry away their furniture. One could find many who deserve to be and to have been harshly treated: but the laws and the customs of the constitution, which you have to observe, speak a different language. In them is mercy, indulgence, everything which freemen are entitled to: but of such qualities Androtion, as you might expect, is by nature and education entirely destitute; for he has submitted to constant insults and affronts in his connexion with men, who never loved but were able to hire him; for which he ought to vent his anger not upon the first citizen that meets him, nor upon prostitutes of the same trade as himself, but on his father who brought him up in such a manner.

That such proceedings were not shameful and in violation of all the laws, he will not be able to contend: he is so impudent however, that in the assembly, striving always to anticipate his defence to this indictment, he ventured to say, that he had drawn enemies upon himself and was then in extreme peril on your account and through you. I will show you,

men of Athens, that he has neither suffered nor is likely to suffer any evil through what he did on your account: but that through his own odious and execrable conduct, though up to the present day he has suffered nothing, he will be a sufferer, if you perform your duty. Just consider. What was it that he promised you, and what did you appoint him to do? To collect money. And to do what else? Nothing. Come then, let me recal to your mind the particulars of this collecting. He levied from Leptines of Cœle thirty-four drachms, from Theoxenus of Alopece seventy drachms and a little more: and from Callicrates the son of Euphemus and the young son of Telestus[1]—I don't remember his name—however, of all that he levied upon, not to enumerate them individually, I hardly know if there was one that owed above a mina. Do you imagine that these various persons are at enmity and war with him on account of his tax-collecting, or rather for different reasons—one, because he said in the hearing of you all in the assembly, that he was a slave and the descendant of slaves, and ought to be rated upon the sixth part of his property with the aliens; another[2] he declared had children by a common woman; this man's father had been debauched, that one's mother was a prostitute; one man's thefts he was scheduling from the beginning;[3] another he said this and that about; another he abused by wholesale; and so on with all? I am sure that the persons towards whom he so intemperately conducted himself, every one of them considered the tax to be a necessary expense; but they have been deeply offended at these indignities and insults. I am certain also, that you appointed

[1] Auger renders this: "autant sur Callicrate fils d'Euphème et sur le jeune fils de Teleste;" as if the words δραχμὰς ἑβδομήκοντα καὶ μικρόν τι πρός were repeated. I understand εἰσέπραξεν only. The orator breaks off, without mentioning the sum levied.

[2] Here the plan of the sentence is changed. To agree with the first part, it should have proceeded thus: Τὸν δὲ, ὅτι παῖδας αὐτῷ ἐκ πορνης ἔφη εἶναι—"another was at enmity with him, because he said," &c. Such changes in construction are common with the orators, and I generally adhere to them in the translation.

[3] Pabst, following Taylor and Reiske: *wieder von einem Andern, er werde ihn verklagen, weil er während seiner Amtsführung Geld unterschlagen habe.* Schaefer's interpretation is the true one, I think: "ἐξ ἀρχῆς verto *ab initio*, hoc est, ex quo potuit rempublicam peculari. Plenè τοὺς τὰ κοινὰ ὑφαιρουμένους." p. 753.

this man to collect money, not to bring up every man's private misfortunes to reproach him with. If they really occurred, Androtion, you ought not to have spoken of them; for many things happen to all of us that we don't like: if they were purely your own invention, what do not you deserve?

Here is a yet more certain proof, that they all hate him, not for his collecting, but for the saucy insolence with which they have been treated. Satyrus, the superintendent of the arsenal, levied for you not seven but thirty-four talents from these same persons, out of which he furnished the ships that sailed out. He does not pretend that he has got enemies on that account; none of the parties from whom he levied is at war with him. Just as one would expect. He, I take it, did what was required of him: you in your petulance and presumption, being invested with some authority, thought proper to heap false and foul reproaches upon men who had expended large sums upon the commonwealth, and who were of better character and better family than yourself. Then must the jury believe that you did all this for their sakes, and take upon themselves the acts of your wickedness and brutality? They ought to detest you rather than support you for such conduct. For a man who acts as representative of the state should imitate the character of the state, and you, men of Athens, ought to support such persons, and detest all who are like the defendant. I must tell you this, though you know it—Whatever kind of persons you are seen to cherish and protect, you will be thought to resemble them.

That he[1] has not made these levies at all for your sake, I will quickly show you. If he were asked, who he thinks do the greater injury to the state, those who farm and live frugally, but through their having to maintain children, through domestic expenses and other public burdens, are in arrear with the property-tax, or those who plunder your allies and destroy the means of people willing to pay the tax, surely with all his impudence he would not be bold enough to say, that men who do not contribute their own money commit greater crime than men who steal that of the public. How comes it then, you abominable fellow, when it is more than thirty years since you commenced your political career, and in that period many generals have wronged the republic

[1] Repeated in the Oration against Timocrates, p 753.

and many orators too, who have been tried before your countrymen, some of whom have suffered death for their crimes, others withdrew and are in exile—how comes it, you never appeared as the accuser of any of them, never were seen to express indignation at the wrongs of the state, notwithstanding that you are so eloquent and audacious, yet here you have displayed a zeal for our interests, where it was necessary for you to ill-use so many people? Would you like, men of Athens, that I should tell you the reason? It is because they[1] share in the wrong which is done you by certain persons, while they embezzle a part of the taxes which are levied; and so insatiable is their avarice, they make a double profit of the commonwealth. For it is not more agreeable to quarrel with a large number of petty offenders than with a small number of great ones, and surely it is not more like a friend of the people to notice the crimes of the many than those of the few. But the reason is what I tell you. He knows that he is one of that class of delinquents; and you he made no account of, therefore he treated you in that way. For had you acknowledged yourselves to be a community of bondsmen, instead of a people claiming empire over others, you could not have endured, O Athenians, the insults which he offered you in the market-place, when he was binding and carrying to gaol both aliens and citizens, bawling in the assemblies and on the platform, calling people slaves and the sons of slaves, who were better and of better parentage than himself, and asking if the prison was built to no purpose. Yes, I should say it was, when your father went dancing off with his fetters at the procession of the Dionysia.[2] The rest of his outrageous acts it would be impossible to recount; they are so many in number. For all together you should take vengeance to-day, and make him an example to others, that they may conduct themselves with more decency.

But perhaps, notwithstanding these political faults, there are other things which he has managed creditably. Nay:

[1] Androtion and persons like him: perhaps with an allusion to Timocrates. See post, p. 161.

[2] Ulpian says, that at this time the prisoners were let out of gaol to enjoy themselves, and that Androtion's father availed himself of the privilege to escape.

his behaviour to you in everything else has been such, that what you have heard are the smallest grounds for detesting him. What would you have me speak of? His repair of the sacred utensils and his destruction of the crowns? or his famous manufacture of the plates? Why for this, even if he had done no other wrong to the commonwealth, it will appear that he deserves to die three times over: for he is chargeable with sacrilege and impiety and embezzlement and everything that is most shameful. The greater portion of what he said to deceive you I shall pass by. Under a pretext that the leaves of the crowns were dropping off, and that they were rotten from age, as if they had been made of violets or roses and not of gold, he persuaded you to melt them down. And then—although for the taxes he added a clause that the public officer should be present, (an affectation of honesty, when every one that paid them was sure to check the accounts;) for the crowns which he broke up he did not apply the same rule, but has himself been orator, goldsmith, treasurer, and checking-clerk. Now, if you required to be trusted in all that you do for the state, you would not have been caught peculating so clearly: but having defined what is just for the property-tax, namely, that the state should not trust you but her own servants, when it appears that in another affair, in the alteration of sacred properties, some of which were not consecrated even in our own generation, you did not introduce the same safeguard which you did in the case of the taxes, are not your motives obvious? I should imagine so.

Again, men of Athens, look to futurity, and see what glorious and admirable public inscriptions he destroyed, and what impious and shameful ones he has written in their place. You must all have seen these inscriptions under the rings of the crowns—"The allies crown the people of Athens for valour and justice"—or—"The allies present as the prize of victory to Pallas"—or naming the particular states—"Such and such a people crown the Athenians, having been saved by the Athenians"—as for example there was inscribed somewhere—"The Eubœans having been delivered crown the people of Athens"—and again—"Conon from the sea-fight with the Lacedæmonians." Such were the inscriptions upon the crowns. These, which for you were themes of honour and emulation, by the destruction of the crowns have dis-

appeared: and on the plates, which this impure wretch ordered to be made in their stead, is written—"By the care of Androtion." Yes! though for the crime of impudicity the laws forbid him to enter the temples, his name is in the temples engraved upon the plates. Like the former inscriptions—is it not?—and a theme of equal glory for you!

One may see therefore, three of the most disgraceful things have been accomplished by them. The Goddess they have despoiled of her crowns: in the state they have extinguished an emulation fostered by deeds, of which the crowns while they existed were a memorial: the dedicators they have robbed of no small honour, the credit of being grateful for obligations. Yet, after doing all this quantity of mischief, they are so hardened and audacious, that they mention these things as creditable acts of administration; and the one imagines that through his friend [1] he shall be spared by you, while the other sits by, and does not sink for shame at his performances. And he is not only so shameless in regard to money-matters, but so stupid as not to know, that crowns are a sign of merit, plates and the like are tokens of wealth, and every crown, though it be small, has the same glory in it as a large one; whereas, although cups and censers, if exceedingly numerous, gild the possessors with a show of opulence,[2] yet if a man prides himself upon small matters, so far from his obtaining honour on that account, he is thought to be vulgar-minded.[3] Androtion however has destroyed the possessions of honour, and made those of wealth insignificant and unworthy of you. And he did not even see, that Athenians were never anxious for the acquirement of riches, but for that of renown were more ambitious than for anything in the world. Here is the proof [4]—They

[1] Timocrates; who in this affair was Androtion's colleague. See the Oration against Timocrates, pp. 755—758, where all this passage is repeated nearly verbatim.

[2] Πλούτου τινα δόξαν προστρίβεται. The metaphor appears to be derived from the rubbing on of paint or varnish. Neither the French nor the German translator has endeavoured to express this.

Auger: "Procure à celui qui les possède la reputation d'homme riche." Pabst: *den Besitzern einen gewissen Ruf von Reichtum verschaffen.*

[3] Ἀπειροκαλος, a word not easy to translate. It signifies a person devoid of good taste and the feelings of a gentleman. Auger: "un sot ridicule."

[4] The like words occur in the Leptinea, p. 459, this Translation, ante.

once possessed greater wealth than any of the Greeks, but to win renown they expended it all, and contributing out of their private means, they never shrank from any peril in the pursuit of glory. From which they have acquired for themselves imperishable treasures, partly the remembrance of their achievements, partly the splendour of the sacred edifices raised to commemorate them, yonder gateway, the Parthenon, docks and porticoes, not a pair of little jars, or three or four golden saucers each weighing a mina, which, when you please, you will frame another decree to melt down. Not by levying tithes[1] upon themselves, not by doing what their enemies

p. 17. Compare also the Third Olynthiac, p. 35; and the Oration De Syntax. 174.

[1] I take it, the orator uses an invidious term to describe heavy taxation, without special reference to any particular impost. Tithe among the Greeks was commonly charged upon the occupiers of public lands, and taken from confiscated property or the spoils of war for a religious offering. It was exacted by the Athenians, when they held Byzantium, from merchant-ships entering the Bosphorus: of which I have spoken in a former note (ante, p. 22). The subject is handled by Böckh in his Public Economy of Athens (Transl. vol. ii. p. 39, &c.), from which the following is an extract:

"Wherever houses or stations for the collection of tenths, *δεκατευτήρια, δεκατηλόγια*, are mentioned, tolls collected at sea are always to be understood, which required particular establishments of this description. Therefore Pollux mentions the erection of them as an event which only happened on particular occasions. But when farmers of tenths and collectors of tenths, *δεκατῶναι, δεκατηλόγοι, δεκατευταί*, are mentioned, duties of different descriptions may be understood. In the first place, there were the tenths of the produce of the soil; we know, for example, that this tax was collected in the governments of the satraps as a distinct branch of revenue; it was also universally extended in the tyrannies of Asia. The tyrant demanded the tenths from all his subjects in his right as lord and master of the whole country, which he only permitted to be occupied by his subjects upon payment of these taxes. Of this kind are the Sicilian tenths, which were received by the kings before that country fell into the hands of the Romans; and many cases of the same duty occur in Greece Proper, as, for example, the tithes of the corn at Cranon in Thessaly. Thus Pisistratus, as tyrant or usurping proprietor of the country, subjected all the lands of the Athenian citizens to a tithe, and incurred the hatred of his people by this despotic measure. The Pisistratidæ did not abolish this tax, but they lowered it to a twentieth. In the same manner in a republic many estates were subject to this tax, as not being the freehold property of the possessor, but only held by him as occupier. Thus the state of Athens was enabled to possess the tithes of public demesnes, and to let them in farm. The temples also frequently enjoyed property

would pray for, doubling the taxes, did they raise these sacred ornaments: not by the help of such counsellors as you did they carry on the government: but by overcoming their enemies, doing what every prudent man would wish them to do, uniting the people in harmony, while they expelled from the market-place men that led such lives as you, they have left behind them a fame that will never die. But you, my countrymen, are so far gone in thoughtlessness and folly, that, even with such examples before your eyes, you will not follow them; but Androtion is repairer of your sacred utensils; Androtion, O earth and heaven! And can any impiety, think ye, surpass this? I look upon it, that a man who is to enter the sanctuaries, to touch the baskets and holy water and superintend the service of religion, ought not to be pure for a stated number of days only, but to have been pure all his lifetime from those practices in which the defendant's life has been passed.

of this kind, of which many examples are extant: thus, for instance, the Delian Apollo received a large amount of tithes from the Cyclades; and in the island of Ithaca the temple of Diana received the tithes from an estate, the possessors of which were bound to keep her temple in repair; and Xenophon had formerly devised the very same regulation at Scillus. Obligations of this nature arose in a great measure from the piety of individuals who dedicated their property to the gods, and thus gave up the right of possession, retaining at the same time the use of it for themselves, in consideration of a fixed payment. The temples may also on certain occasions have received the right of tithes by conquest: thus the Greeks vowed, that after the fortunate termination of the Persian war all states who had afforded any protection to the enemy should pay a tithe to the Delphian Apollo, that is to say, that they would make their lands subject to a tribute. At Athens moreover Minerva of the Parthenon received the tithe of the plunder and of captures, and also of certain fines; while others were paid to the temples without any deduction, together with the tithe either of all or of a large proportion of confiscated property. The tithes of Minerva are mentioned in connexion with the fiftieths of other gods and of the heroes of the tribes: the latter were probably similar percentages, and must not be confounded with the customs-duty of the fiftieth."

THE ORATION AGAINST ARISTOCRATES

THE ARGUMENT.

ARISTOCRATES was the mover of that decree which the Athenians passed in favour of Charidemus of Oreus, B.C. 352, of which, and of the circumstances attending it, I have spoken fully in the Appendix on the Thracian Chersonese in the First Volume. The exact terms of the decree have not come down to us. Its professed objects were, to reward Charidemus for his past services to Athens, and at the same time to attach him more firmly to her interests and secure his assistance for the future. It therefore contained (among other clauses) one making his person inviolable, and declaring, "that whosoever killed him might lawfully be arrested in any place within the limits of the Athenian confederacy, and that any state or any individual refusing to give up such person, or attempting to rescue him, should be excluded from all the benefit of Athenian connexion."

For this decree, as being impolitic and injurious to his country, as well as contrary to the letter and spirit of her laws, Aristocrates was indicted by one Euthycles, for whom Demosthenes composed the present speech, which was spoken on the trial. We have no further knowledge of either the prosecutor or the defendant than what we obtain from the oration of Demosthenes. They were perhaps obscure persons put forward by the different political parties, one by the supporters of Charidemus, the other by his adversaries. It appears however that Euthycles had been employed on some naval command in the Hellespont, and he may therefore have been conversant with Thracian politics.

The orator undertakes to establish three points: first, that the decree was contrary to law; secondly, that Charidemus was unworthy of the distinction conferred upon him; and thirdly, that it was impolitic and dangerous to grant it. After a general opening of the case, he proceeds to establish his first objection. As Charidemus had been made a citizen of Athens, it became any one proposing a decree in his favour to conform to the laws of Athens. This duty Aristocrates had neglected. The Attic law provided, as was just, that the trial and the punishment of homicide should vary according to the circumstances of the case. Homicide might be voluntary, or it might be accidental: in some cases it was perfectly justifiable, in others it was excusable only. The party who committed it might be amenable to death or exile; or required only to make atonement and obtain purification; or entitled to an absolute acquittal. Even in cases of wilful murder the guilty man could only be taken within the boun

daries of Attica: if he went into exile, and kept aloof from the Amphictyonic meetings and public games of Greece, it was not lawful to molest him; for it was a sacred principle that an exile should not be disturbed in his place of refuge. The Athenian law was so careful to make proper distinctions between the different kinds of homicide, that it had appointed different courts to try them. There was the court of Areopagus, and the courts *ad Palladium, ad Delphinium, ad Prytaneum,* and *in Phreatto;* all of which were founded in early times, and were regarded with the highest respect and veneration by the people. Each of them had its own peculiar methods of proceeding adapted to the particular class of offences that came under its jurisdiction. Aristocrates had confounded all these useful distinctions; he had shown his contempt of the jurisprudence of his country and of her ancient and valuable institutions, by directing that any person killing Charidemus should be treated as a malefactor of the most heinous kind, without regard to the circumstances of the case. It was by no means unlikely that Charidemus, who was at the head of a mercenary force, and accustomed to acts of aggression and violence, might lose his life in some quarrel wantonly provoked by himself, in which, according to every principle of justice, it would be lawful to resist him. Yet by this decree a man might be punished who killed him in self-defence, or in resistance to some outrageous attack upon his family or fellow-citizens. Again, by the Athenian law punishment was not inflicted without trial and judgment: even a convicted murderer who returned from exile and was seen in the market-place must be taken to prison to be dealt with according to law. Aristocrates authorized summary proceedings to be taken against a party whose guilt was yet unproved, not for the purpose of bringing him to trial, but in order to punish him without trial. The offender was left to the mercy of the party by whom he was apprehended, who might carry him to his own house, ill-treat him in any way that he pleased, extort money from him, or even put him to the rack. To prove the illegality of such proceedings, the orator cites various clauses from the Athenian statute-book.

Upon this part of the case we must caution the reader not to be misled by the orator's vehement assertions, which, to say the least, are to be viewed with great suspicion. We have not before us the whole decree of Aristocrates, nor have we the advantage of seeing the arguments on the other side: we can form therefore only an imperfect judgment from the fragments of the decree that are preserved to us. These however do not of themselves bear the construction which the orator puts upon them. They direct that any person killing Charidemus may be seized and carried away, without saying whither or for what purpose: yet we should rather suppose it to have been intended, that he was to be brought to Athens for judgment, than that the captor might take and do with him what he pleased; and such would be the more natural meaning of the words. If therefore the clause in question has been fairly quoted, it would appear that, while the framer of the decree laid himself open to just attack, and perhaps even to legal penalties, for not defining his intentions in so important a matter with greater clearness, the orator, in availing

himself of this omission on the part of his adversary, has exaggerated the fault, and represented as a wilful violation of law what in fact was mere carelessness or inaccuracy.

Another charge made against Aristocrates is, that he had infringed a statute which expressly forbade the passing of any privilegium. The laws were required to be the same for all. If a law could not be passed which applied only to one individual, much less could a decree. There was another statute which said, that no decree either of the Council or the people should have more force than the law; and this too Aristocrates had broken. Further, his decree was contrary to all the precedents in similar cases; and, considering that Charidemus had become a citizen of Athens, there was the less reason why the principles of the constitution should be departed from in his favour.

After disposing of some frivolous pleas which he expected to be set up by his adversary, the orator proceeds to what may be called the general merits of the case, contending that Charidemus was in no respect deserving of the honour which had been bestowed upon him, and that it would lead to consequences most injurious to Athens.

Charidemus, he says, was a man of low origin and profligate character, a reckless and unprincipled adventurer, who lent his services for hire to those that paid him best, and never served any one but from base motives of lucre. To confer extraordinary honours upon such a person would be a disgrace to the Athenians, even if he had been a useful auxiliary. But the fact was otherwise. Whenever they had put any trust in him, he had betrayed them: he had been, upon the whole, one of their most insidious and determined enemies: and though it was true, that he was on good terms with them at that moment, they might be sure from their experience of his past conduct, that he would take the first opportunity of turning against them. To prove these charges, the orator enters upon a minute examination of the life and actions of Charidemus; showing how he was at first a common slinger, then he became the captain of a pirate vessel, afterwards the leader of a band of mercenaries. Having entered into the service of Iphicrates, he prevented the surrender of Amphipolis to the Athenians by delivering up the hostages entrusted to him by that general: he then went over to the Olynthians, and was actually carrying succours to Amphipolis, when he was captured by Timotheus and compelled to join him against his will. He promised Cephisodotus, in return for some assistance lent him, that he would recover the Thracian Chersonese for the Athenians; yet had no sooner got out of his own difficulties by the aid of the Athenian commander, than he accepted employment under Cotys king of Thrace, and assisted him in besieging Elæus and Crithote. After the death of Cotys, he attached himself to Cersobleptes, whose sister he married, and for whom he exerted himself, not only to acquire the dominion of the Chersonese, but also the whole of the Thracian monarchy, to the exclusion of Berisades and Amadocus, who were entitled to share it with him. He treacherously attacked Cephisodotus, whom he had promised to assist, forced him into a dishonourable convention, which the Athenians were obliged to repudiate, and carried on war against

them for seven months, until their commander Athenodorus, coalescing with Berisades and Amadocus, compelled him to sign a treaty on behalf of Cersobleptes, by which it was agreed that Thrace should be equally divided between the three princes, and the Chersonese should be ceded to Athens. Even then he delayed the surrender of the Chersonese, under one pretence or another, as long as he possibly could, and would have evaded it altogether, had not Chares at length been sent to the Hellespont with a strong fleet, which compelled him to fulfil his engagement. The Athenians had thus recovered the Chersonese by their own forces, not with the assistance of Charidemus, as was falsely pretended by his supporters, but in spite of all his efforts to the contrary. While the rest of the peninsula was given up to them, Charidemus had taken care to reserve Cardia to himself, with a manifestly insidious purpose. That city had always been hostile to the Athenians, and aided Charidemus in all his enterprises. It was from here that he was carrying succours to Amphipolis, when he was taken prisoner by Timotheus. To the Cardians he had delivered up Miltocythes, the pretender to the kingdom of Thrace, and they had put him to a cruel death. Cardia was so situated as to be the key of the Thracian Chersonese, and the possession of it would enable Cersobleptes at any time to attack the peninsula. That such a project was in contemplation, might be inferred from certain secret negotiations which Charidemus had lately carried on with Philip of Macedon, when that king advanced to Maronea, and would very likely have joined Cersobleptes and the Cardians, had not Amadocus refused him a passage through his territory.

It appeared from all this that Charidemus, so far from deserving reward for any service he had done to the Athenians, ought to be contented if he escaped punishment at their hands. He was at best a time-server, who could not safely be trusted: but it was pretty evident that, being the general and prime minister of Cersobleptes, his real design was to forward the ambitious schemes of that monarch, and he was only biding his time to do it effectually. The true policy of the Athenians was to keep the kingdom of Thrace divided, so that each of the rival princes might court their friendship, and none of them be strong enough to disturb their possessions in the Hellespont. If Thrace were united under one powerful king, he would be sure to invade the Chersonese, as Cotys had done. The object of the present decree was, to enable Charidemus to carry his arms against Amadocus and the sons of the deceased Berisades: for if his person were declared inviolable by an Athenian decree, the supporters of the rival princes, who were friends of Athens, would be deterred from making any opposition to him. It would be urged on the other side, that it was not the interest of Cersobleptes to subdue the Chersonese, because then the Athenians would close his seaports by means of their navy, and he would lose more revenue by that than he would gain by the increase of territory. They should bear in mind however, that ambitious potentates were not always guided by discreet views of their true interests, any more than they were by regard to honesty and good faith. Of this they had ample evidence in the measures pursued by Cotys and by Philip. Their only prudent

course was to put it out of the power of such persons to do them an injury.

Independently of the special reasons against this decree furnished by the past history of Charidemus and by his present position and connexions, it was wrong and foolish to confer such honours upon a stranger, who neither resided among them, nor had any ties binding him to the country. Friendships with men like him could not be depended on. They courted the Athenian people and obtained the grant of citizenship for their own private ends; but they had little respect for the principles of the Athenian constitution, and they as readily attached themselves to other states, when they saw their advantage in it. Thus Python, the murderer of Cotys, was made a citizen of Athens; but afterwards, finding it suited him better, he went over to the king of Macedon and became his minister. There were other men who had at least as good a claim as Charidemus to this extraordinary protection; for example, Athenodorus, Simon and Bianor; Menestratus of Eretria. Phayllus the Phocian. But where was the thing to stop? The Athenians would be constituting themselves a sort of body-guard to every mercenary leader who happened at any time to be their ally. He (Euthycles) had not opposed the grant of citizenship and a golden crown to Charidemus, because there was no such great harm in conferring a mere honorary distinction, and, whatever his private convictions were, he felt that opposition to the general feelings of the people would have been certainly fruitless, and might have been deemed vexatious. Now however, when they proposed to put power into the hands of such a man, and to pass a measure which would enable him to pursue his mischievous designs with impunity, he could be silent no longer. It would be urged perhaps, that an adverse decision might make Charidemus their enemy, when he was inclined to be their friend: to which the answer was, that, if Charidemus was really disposed to befriend their commonwealth, he would endeavour to prove it by his future actions, and in the meantime it was better to convince him that they were not to be deluded by idle professions.

It was highly important that the Athenians should reform their ways both in regard to rewards and punishments; that they should be more sparing of the former, and more strict and severe in dealing with those who injured the commonwealth. Their ancestors rewarded none but men of signal merit; and them they did not reward extravagantly; and, what was still more important, they admitted no former merits to be an excuse for subsequent demerit, but even their most distinguished citizens, such as Themistocles and Cimon, they visited with heavy penalties when they misconducted themselves. In later times the honours of the Athenian republic had been lavished indiscriminately upon all sorts of persons. The consequence was, they had become cheap: there was but little encouragement to honest men to do real service to their state, and the receivers of their franchise and their crowns, so far from being grateful for them, were ready to desert and betray them for the slightest cause. It was discovered that the meanest people could obtain an honorary decree through the influence of venal orators, who served their own

interests at the expense of the state: and, while in the time of their ancestors it was the republic that was wealthy and prosperous, now the people of Athens were content to see a few individuals raised to wealth and eminence, and to leave all the powers of government in their hands. Their decline from the spirit of ancient times could not be more strikingly exemplified than by this decree in favour of a man, whom third-rate cities of Greece would have thought it disgraceful to elevate to such high dignity, and who in Oreus, his own native place, was not admitted even to the privileges of a freeborn citizen.

He concludes with a brief recapitulation of the laws which Aristocrates had infringed.

This oration is justly ranked among the most important which have come down to us, on account of the valuable information which it furnishes respecting the affairs of Thrace and the Chersonese, and the light which it throws upon the criminal jurisprudence of Athens.

Let none of you, O Athenians, imagine that I am here from motives of personal enmity to accuse the defendant Aristocrates, or that upon the discovery of some small and trifling error I am rushing eagerly into a quarrel. Unless I am mistaken in my views and calculations, I am exerting myself for no other object than that you may hold the Chersonese in safety, and may not again by trickery be deprived of it. If you wish therefore to understand these matters correctly, and to give a just and legal decision upon the indictment, you should not only attend to the words of the decree, but consider their probable consequences. Could you have seen through the artifice upon the first hearing, you would perhaps not have been deceived at all: but as this is one of the frauds practised by certain people, to move and frame decrees in such a way that you may suspect nothing and be thrown off your guard, you must not be greatly surprised, if we can show this decree to be so framed, that, while it appears to give a personal protection to Charidemus, it deprives the commonwealth of her really sure and effectual means of protecting the Chersonese. You ought indeed, O Athenians, to give me your attention, and to hear what I say with favour. For when, without being one of your eternal speakers or one of the politicians in whom you have confidence, I tell you that I can prove such a dangerous thing to have been attempted; if you will support me to the utmost of your power and lend me a willing ear, you will not only secure yourselves against this danger, but encourage any of

us who believe we can render service to the state.[1] We shall believe so, if we see it is not difficult to obtain an audience with you. Many now being afraid of this, not clever speakers perhaps, but better men than those who are, it never enters their heads to consider any public question. I myself—by all the Gods, I assure you—should have shrunk from preferring this indictment, only I thought it would be highly disgraceful to keep quiet and hold my tongue now, when I see people contriving a measure injurious to Athens—I that formerly, when I sailed as commander to the Hellespont, spoke out and accused certain persons whom I believed to have done you wrong.

I am aware that some people consider Charidemus to be a benefactor of the republic. I think however that, if I can give the explanations which I propose, and tell you what I know him to have done, I shall prove not only that he is no benefactor, but that he is the most malignant enemy, and has got a very different character from what he deserves. If this, men of Athens, had been the gravest offence of Aristocrates, to have made provision by decree for such a person as I will prove Charidemus to be, giving him special and extra-legal retribution for any injury that he may suffer, I should have addressed you upon that point immediately, to convince you that he is far from deserving to obtain such a decree. There is however a still greater injustice effected by the decree, which you should first be informed of and on your guard against.

I must first of all state and explain, what it is that has enabled you to hold the Chersonese securely: by such in-

[1] In the translation of πρᾶγμα τηλικοῦτον πεπραγμένον—τοῦτό τε σώσετε, I follow Reiske. Auger renders it differently: "Comme j'entreprends de vous éclairer dans une affaire importante, sans être ni un de ces orateurs incommodes qui vous importunent, ni un de ces ministres qui gouvernant la république jouissent dans cette ville d'un grand crédit; si vous me secondez avec ardeur, si vous m'écoutez favorablement, outre que vous conserverez ce qu'on veut vous ravir, vous exciterez le zèle de quiconque croira pouvoir vous être utile." Pabst *Obwohl ich nämlich nicht zu denen gehöre, die Euch häufig lästig werden, noch auch zu denen, die bei der Verwaltung des Staates Vertrauen und Ansehen sich bei Euch erworben haben, so behaupte ich dennoch, eine so bedeutende Thatsache erweisen zu können. Wenn Ihr daher, so weit es in eurer Macht steht, mein Bestreben befördert und bereitwillig mir zuhört, so werdet Ihr jenen Verlust Euch ersparen,* &c.

formation you will also clearly see the wrong which has been done. The cause, men of Athens, is this—that upon the death of Cotys three princes instead of one succeeded to the kingdom of Thrace, namely, Berisades, Amadocus, and Cersobleptes: consequently they have been rivals to each other, but have caressed and courted you. Certain people, O Athenians, wishing to put an end to this, to destroy the other princes, and to put the whole monarchy into the hands of Cersobleptes, contrive to obtain this resolution of Council; by the terms of which indeed they were far from appearing to have any such design, though in fact they were using all their efforts to forward it, as I shall prove. For when Berisades, one of the princes, died, and Cersobleptes, violating his oaths and the treaty which he made with you, levied war upon Amadocus and the sons of Berisades, it was evident that Athenodorus would assist the sons of Berisades, and that Simon and Bianor would assist Amadocus: for the former is connected by marriage with Berisades, as the latter are with Amadocus. They looked therefore for the best means of compelling those generals to keep quiet, of isolating the rival princes, and thus enabling Charidemus, who was striving to win the monarchy for Cersobleptes, to get everything firmly into his power. The best way was, first for your decree to be obtained, making any one who killed him liable to arrest; secondly, for Charidemus to be elected general by you. For Simon and Bianor, who had been made citizens, and who, independently of that, were devoted to you, would not be in a hurry to take the field against your general; and Athenodorus, who was a citizen by birth, would never think of such a thing, and never expose himself to a charge under the decree, which would be sure to be advanced against them, if anything happened to Charidemus. By such means, the princes being destitute of support, and impunity being secured for themselves, they hoped easily to expel them and get possession of the kingdom.

That such was their expectation and such their contrivance, the facts are sufficient to prove. For at the very time when they were themselves commencing war, there came as ambassador from them to you this Aristomachus of Alopece, who in his address to the assembly, besides praising Cersobleptes and Charidemus in general terms, and declaring how

friendly their feelings were to you, said that Charidemus was the only person able to recover Amphipolis for the commonwealth, and advised you to elect him general. This resolution of Council had already been concerted and prepared by them, so that, in case you should be prevailed upon through the hopes and promises which Aristomachus held out, the assembly might immediately ratify it, and nothing should stand in the way. Let me ask; how could any people have more artfully or cunningly devised a plot for the expulsion of the rival princes and the subjugation of the whole empire under one whose cause they espoused, than by so contriving matters, that the persons who would be likely to assist the two should be intimidated and shrink from the vexatious proceedings which they must expect to be taken against them by virtue of this decree, while he that was trying to get the kingdom for one and working for everything opposed to your interests had an ample licence given him to effect his purposes securely? And not only from this is it evident that the resolution of Council was moved for the reasons which I state, but the decree itself affords a pretty strong piece of evidence. After the words "if any one shall kill Charidemus," omitting to state what Charidemus must be doing at the time, whether acting for your advantage or otherwise, he has immediately added, "that he may be apprehended[1] in the territory of your allies." Now no man who is alike our enemy and his will ever come to our allies, whether he has killed Charidemus or not; so that this penal clause has not been framed against such a party. One that feared the decree, and was careful not to incur our certain enmity, would be a person friendly to us and opposed to him in the event of his attempting anything against us. Such persons are Athenodorus, Simon, Bianor, the Thracian princes, all who would wish to oblige you by checking Charidemus in any hostile attempt.

The object then for which the resolution of Council was

[1] *Ἀγώγιμον ἐκ τῶν συμμάχων.* The full signification of these words is: "liable to be seized and carried prisoner out of the territory of your allies." Pabst: *es könne derselbe vom Gebiet der Bundesgenossen fort ins Gefängniss geschleppt werden.* Auger, who wrongly connects *εὐθὺς* with *ἀγώγιμον*: "pourra être saisi dans les villes des alliés et ameué aussitôt." Compare Xenophon, Hellen. vii. c. 3, s. 11, *ἐψηφίσασθε τοὺς φυγάδας ἀγωγίμους εἶναι ἐκ πασῶν τῶν συμμαχίδων.*

As to the orator's misconstruction of this clause, see post, p. 175.

moved, that the people under delusion might confirm it, and the reason why we have preferred this indictment, wishing to prevent such a result, I have told you, men of Athens. Perhaps, as I have undertaken to prove three things, first, that the decree has been moved in violation of the laws, secondly, that it is disadvantageous to the commonwealth. thirdly, that the party for whom it has been drawn is unworthy to obtain such honours, it is right that I should give to you my hearers the option, what you would like to hear first, what second, and what last. Consider then which you would like, that I may begin with that. Do you wish me to begin with the breach of law?[1] Then to that I will address myself. But I have one thing to request, to entreat of you all—and it is reasonable, I am sure—Don't let any of you, men of Athens, out of a jealous feeling because he has been deceived in Charidemus and thinks him a benefactor, listen with less favour to my discourse about the laws: don't let him on that account deprive himself of the power to vote conscientiously, or me of the right to open my whole case to you as I please: but let him give me his attention thus—and see how fairly I will put it. When I am speaking about the laws, irrespective[2] of the person in whose favour the decree has been moved and of his character, look whether it has been moved contrary to the laws or in accordance with them, and look at nothing else. When I bring his deeds home to him, and explain the manner in which he has deceived you, look at the facts, whether I state them truly or falsely. When I discuss whether or no it is expedient for the commonwealth to pass this decree, lay aside everything else, and consider whether my reasoning upon the question is sound or unsound. If you listen to me in this temper of mind, you will yourselves more fully comprehend what is necessary, looking at each point singly, and not trying a heap of questions at once; and I shall be able to explain what I want more easily. Upon every point I shall be brief.

Now take and read the laws themselves, that out of their very language I may show the illegality which has been committed.

[1] Here we are to suppose the jury gave token of assent. See ante, p. 30, note 1; Vol. II. p. 26.

[2] Others connect ἀφελὼν with σκοπείσθω.

ONE OF THE LAWS OF HOMICIDE FROM THE AREOPAGUS:

"The Council of Areopagus shall have cognizance of murder, and wounding with malicious intent, and arson, and poisoning, if any one shall kill another by giving poison."

Stop. You have heard both the law and the decree,[1] men of Athens. I will tell you how, as it appears to me, you will most easily comprehend the arguments on the point of illegality. You must look what is the position of the man, in whose favour the decree has been moved; whether he is an alien, or a resident alien, or a citizen. If we call him a resident alien, we shall not be speaking the truth; if an alien, we shall not be acting justly; for the people's grant, by which he has become a citizen, ought to stand good. We must treat him therefore in argument, it seems, as a citizen. And only see how fairly and equitably I will deal with the question: for, while I rank him in that class in which he will obtain the highest honour, I don't consider that privileges, which even we native citizens do not enjoy, ought in contempt of the laws to be accorded to him. What privileges do I mean? Those which the defendant has inserted in his decree. It is written in the law, that the Council shall have cognizance of murder, and wounding with malicious intent, and arson, and poisoning, if any one shall kill another by giving poison. And the legislator having premised, "if any one shall kill," has nevertheless ordered a trial, before saying how the author of the deed is to be punished; herein, men of Athens, exercising a wise forethought for the religion of the whole state. How so? It is impossible for all of us to know who the murderer is. To believe therefore any such charges without trial, he thought would be monstrous; and he considered that, since it is we who will have to avenge the sufferer, we must be satisfied and convinced by proof that the accused party is guilty; for then is it righteous to punish, when we are acquainted with the facts, and not before. Moreover he reckoned that all such expressions as "if one shall kill," "if one shall commit sacrilege," "if one shall commit treason," and the like, before trial are terms of accusation

[1] The decree of Aristocrates, set forth in the indictment, which was read by a clerk of the court to the jury at the commencement of the trial.

only, after trial and conviction they become crimes. With a term of accusation he thought it proper to associate not punishment, but trial. And therefore he enacted that, if any man shall kill another, the Council shall have cognizance, and did not state what he is to suffer upon conviction. Thus did the legislator express himself: how did the author of the decree? "If any one shall kill Charidemus," he says—the misfortune he has described in the same terms as the legislator, "if any one shall kill"—but he does not go on in the same manner: he has done away with all judicial hearing, and made the party liable to immediate arrest; in contempt of the tribunal appointed by law, he has given over without trial to his accusers, to be dealt with according to their pleasure, a person whose guilt is not yet clear. And when they have taken him, it will be lawful for them to torture or to beat or to exact money from him.[1] But all these things are

[1] It is impossible, as I have already intimated in the Argument, to extract from the words of the decree, which are here cited, the meaning which the orator attributes to them. Salmasius indeed, in order to reconcile them with the argument of Demosthenes, assigns an extraordinary force to the terms ἄγειν and ἀγώγιμον, for which he has been severely handled by his great opponent Heraldus, with whose opinion most scholars concur. The controversy between them is thus stated and decided by Taylor in his preface:

"Ab hoc Criticorum pari, Salmasium intelligo et Heraldum, cum multa acriter et eruditè utrimque disputantur, quæ ad causam Aristocrateam pertingunt, tum illud imprimis, quod istius causæ pene summam non mediocriter afficit: nimirum, cum in suâ rogatione scripserit Aristocrates—*Quicunque Charidemum interfecerit, eum ex omnibus gentibus, quæ fœdere et amicitiâ cum populo Atheniensi conjunctæ forent,* ἀγώγιμον εἶναι—quid per illud ἀγώγιμον necessario sit intelligendum, scilicet quid cuivis in eum hominem liceret, qui Charidemum leto dederit. Fuisse ἀπαγωγὴν in jurisprudentiâ Atticâ, istius juris periti probè norunt: norunt etiam, quid sibi velit et qualiter exercenda. Nimirum injectâ manu reum in jus ducere, ut ibi legitimum supplicium de eo sumatur: præterea nihil. Atque in hoc, credo, consentiunt, qui in omnibus fere aliis dissentire inter se videntur. Attamen, si Demostheni credas, ex hâc Aristocratis rogatione sequeretur, inclementius omnino et indignius tractari potuisse eum, qui Charidemum interfecerit, quam communi isto ἀπαγωγῆς ritu in quamvis alium ordinario erat statutum. Ita enim ille p. 631, ἔν γε τῷ ποιεῖν ἀγώγιμον πάνθ', ὅσα ἀπείρηκεν ὁ νόμος, δέδωκας, χρήματα πράξασθαι, ζῶντα λυμαίνεσθαι, κακοῦν, ἔχοντα αὐτὸν ἀποκτιννύναι. Hæc quam aliena sint, vides. Quam absonum hoc, ut aliud scilicet in suasione Aristocrateâ exprimeret vox ἀπάγειν, aliud in communi istius populi νομοθεσίᾳ! Comminiscitur ergo Salmasius commentum, in quo sibi maximè placere videbatur, differre ἄγειν et ἀγώγιμον

by the law underneath[1] positively and plainly forbidden to be done even to convicted and declared murderers. Read them the words of the following law:—

THE LAW.

"And it shall be lawful to kill[2] murderers in our own territory or to take them into custody, as the lawgiver directs in the tablet,[3] but not to ill-treat nor to amerce them, under

ab eo quod dicitur ἀπάγειν et ἀπαγώγιμον: illud esse vi domum cruciandum, si ita videretur, hoc jure ad magistratum puniendum ducere; et tulisse porro Aristocratem extrema illa et durissima. Id tamen omnino falsum est. Græci ἄγειν et ἀπάγειν promiscue et indifferenter, sicut Latini *ducere* et *abducere*, dicunt, ut pluribus ostendit Heraldus. Neque porro Aristocrates tantum cuique licere suâ rogatione voluit. Non ea erat istius inclementia, quam in hâc oratione insectatur Demosthenes, verum alia omnino. Insimulabatur enim potissimum, primum, quod, cum leges nihil permittant nisi in eum, qui in jure legitime convictus fuerit, Aristocrates scripsit licere etiam in indemnatum: secundo, cum istud ἀπάγειν neque in damnatum competebat, modo ab Atheniensium ditione abstineret, id Aristocrates voluit fieri extra Atticum territorium etiam in indemnato. Quod autem addidit de contumeliis iis et injuriosâ usque ad necem tractatione, id suo more exaggerat, oratoriè potius quam juridicè, et est luculentissimum argumentum istius violentiæ in quâ tantum dominatur Demosthenes. Et in eâ sententia video esse Ulpianum in scholiis ad hanc orationem."

The error of Salmasius, though not expressly countenanced by the words of Demosthenes, was doubtless occasioned by the fallacious reasoning which runs through all the first part of the oration. Demosthenes, instead of simply objecting that the decree did not specify where the prisoner was to be taken and what was to be done with him, asserts that it positively authorized the illegal and oppressive measures which are mentioned in the text. As Auger properly puts it: "Comme l'auteur du décret, après ces mots, *pourra être saisi*, n'ajoutoit pas pourquoi celui à qui on imputeroit le meurtre de Charidème pourroit être saisi, si c'étoit pour être jugé, ou pour un autre fin, Démosthene met les choses au pis." Since we may fairly presume, that Demosthenes brought to the attention of the jury all those parts of the decree which made against the author, and that, if he has omitted to notice any clauses, it was probably because they were unfavourable to his own argument, the least we can say is, that the charge here advanced is a violent exaggeration.

[1] The law written under the one last cited on the board exhibited to the jury.

[2] That is, "they might be killed, if they resisted lawful capture;" as Heraldus explains it.

[3] The laws of Solon were originally inscribed on wooden tablets of a pyramidal shape, made to turn on an axis, and hence called ἄξονες, and sometimes κύρβεις. They were at first kept in the Acropolis, but afterwards brought down to the Prytaneum.

pain of having to pay double damages. And the Archons shall bring to trial such causes as they have cognizance of respectively for any one that desires it: and the court of Heliæa shall decide."

You have heard the law, men of Athens. Look and observe, how wisely, how piously the legislator has drawn it. Murderers, he says. In the first place, by a murderer he means one who has been found guilty by verdict: for no one falls under that designation, before he has been convicted and found guilty. Where does he show this? Both in the former law and in the present. In the former, after the clause "if any one shall kill," he added "the Council shall have cognizance:" in this, after naming the murderer, he has declared what he ought to suffer. Where the thing was accusation only, he has directed the trial; but where the term has become properly applicable to a convict, he has ordained the punishment. He must therefore be speaking of convicted parties. And what says he? That it shall be lawful to kill or to take into custody. Does it mean, to the captor's own house, or as he pleases? No such thing. How then? As is directed in the tablet, he says. And what is that? What you all know. The Judges have authority to punish with death those who are in exile for murder; and you all saw the person in the assembly last year carried off by them to prison. It is to them therefore that he orders the party to be taken. And how does this differ from taking him to the captor's own house? He that takes off the offender to the Judges, men of Athens, gives all power over him to the laws; he that carries him to his own house gives the power to himself. In the former case the punishment may be such as the law prescribes; in the other case, such as the captor pleases: and surely it makes a vast difference, whether the law has authority to inflict punishment, or whether an enemy has. "But not to ill-treat nor to amerce," it says. What mean those expressions? By not ill-treating, a term undoubtedly familiar to all, he means not to scourge, not to shackle, not to do anything of that sort: and by not amercing, not to exact pecuniary penalties; for the ancients called a pecuniary penalty an amercement. Thus has the law defined how a murderer and a convict must be punished, and where, naming the country of the sufferer; and has posi-

tively declared that it shall be in no other manner but that, and nowhere else but there. The author of the decree however is far from having defined it thus: in fact he has said quite the contrary; for after writing "if any one shall kill Charidemus," "it shall be lawful," he adds, "to apprehend him in any place." What mean you? When the laws do not permit even convicts to be taken into custody except in our own territory, do you allow a man without trial to be apprehended in all the domain of our confederacy? And when the laws do not sanction the arrest even in our own territory, do you authorize it to be effected everywhere? Moreover, in making the offender liable to be arrested, you have allowed everything which the law has forbidden; to extort money, to ill-treat and torment him in his lifetime, to keep him in private custody and put him to death. Could any conviction for an illegal motion be clearer than this? Could there be a conviction for a more shameful decree? For, when there were two expressions open to your choice, one applicable to parties accused, "if any one shall kill," another to convicted parties, "if any one shall be a murderer," in your description you adopted the term for a person under accusation, but you pronounce against untried parties a sentence which the laws do not pass even upon the condemned; and the intermediate proceedings you suppressed: for between accusation and conviction is trial, which the defendant has nowhere introduced in his decree.

Read the laws following:—

THE LAW.

"And if any one shall kill a murderer or be the cause of his death, whilst he keeps away from the border-market[1] and from the games and Amphictyonic sacrifices, such person shall be liable to the same penalties as if he had killed an Athenian; and the Fifty-one[2] shall decide."

You ought to be informed, O Athenians, what was the intent of him that framed the laws: and you will see how

[1] This, as the orator himself shows, was a place on the confines of two neighbouring states, where the borderers met for the purpose of traffic.

[2] The Ephetæ, of whose criminal jurisdiction I shall speak in Appendix VIII.

cautiously and conformably to legal principles he defined everything. If any one shall kill a murderer, (he says,) or be the cause of his death, whilst he keeps away from the border-market and from the games and Amphictyonic sacrifices, such person shall be liable to the same penalties as if he had killed an Athenian; and the Fifty-one shall decide. What does all this mean? He considered that, if a man who has fled from his country on a charge of murder and been condemned has once escaped and saved himself, though he ought to be expelled from the native land of his victim, it is not righteous to kill him in every place. What was the legislator's view? That, if we slay people who have fled to other countries, others will slay those who have fled to Athens. And should this be the case, the only refuge that is left for the unfortunate will be abolished. What is this? The power of removing from the land of the murdered to a land where none have been injured, and there dwelling in security. To prevent what I say, and in order that the avenging of misfortunes may not be endless, he wrote—"if any one shall kill a murderer whilst he keeps away from the border-market"—those are his words: meaning what? From the borders of the country. For there, as it appears to me, our own people and the neighbours adjoining used in ancient times to assemble; whence he has called it border-market. And again, "from the Amphictyonic sacrifices." Wherefore, I ask, did he exclude a murderer from these too? He banishes the culprit from everything in which the deceased in his lifetime had a part: first, from his country and all things in it either sacred or profane, assigning the border-market as the limit from which he declares him excluded: next, from the sacrifices of the Amphictyons; for in them, if the deceased was a Greek, he had a part. And from the games. On what account? Because the games in Greece are open to all, and by virtue of the general right the deceased had access to them also. Therefore also from them let him keep away. From all these places he banishes the murderer. But if any one shall kill him elsewhere, out of the excepted places, the legislator has given the same redress as in the event of killing an Athenian. For he did not describe the exile by the name of the state, with which he has no communion, but by that of the crime with which he

has made himself chargeable; and therefore he says, "if any one shall kill a murderer." Then, after stating from what he must be excluded, in order to impose the sentence legally he mentioned the name of the state—"let him be subject to the same penalties as if he were to kill an Athenian"—speaking a different language, O Athenians, from the mover of this decree. Is it not cruel, when the law has allowed men to live safely in exile, on condition of their avoiding the places which I have mentioned, to propose that they shall be delivered up, and to rob them of that benefit of mercy which the unfortunate may fairly claim from those whom their crimes concern not; it being uncertain, in the darkness of our future destinies, for which among us all the benefit is reserved. And now, should the slayer of Charidemus (supposing such an event really to happen) be slain in return by any persons to whom he is surrendered, after he has gone into exile and keeps aloof from the forbidden places, they will themselves be amenable to the penalties of murder, and so will you, Aristocrates: for it is written, "if any one be the cause," and you will be the cause, having given the sanction of your decree. Well then: if we let you alone in such a case, we shall be living in company with men polluted; if we take proceedings against you, we shall be forced to act contrary to our own determinations. Is it a slight or trivial ground that you have for setting aside the decree?

Now read the next law:

THE LAW.

"If any one beyond the boundaries shall pursue or seize or carry off[1] any homicide who has quitted the country,

[1] Φέρῃ ἢ ἄγῃ. Pabst: *gewaltsam behandelt und beraubt.* Auger: "saisira, emmenera;" which I take to be more correct. The phrase ἄγειν καὶ φέρειν undoubtedly signifies "to plunder," "to rob and pill," as Spenser has it. Ἄγειν is properly applicable to the living booty, φέρειν to the inanimate; but the two verbs together are used in a loose sort of way, as if they were equivalent to λῄζεσθαι, with an accusative of the people or country pillaged: as in Xenophon, Hellen. iii. c. 2, s. 11, φέροντας καὶ ἄγοντας τὴν Ἰωνίαν. Similarly we have ἄγειν καὶ καίειν. (Ibid. c. 2, s. 5.) Here however it is different. Each of the verbs denotes a laying of violent hands upon the person, φέρῃ perhaps importing a ruder kind of treatment than ἄγῃ. Some confirmation of this view is afforded by the passage below (p. 639 of the Greek text), πάντες οἱ στρατεύματ' ἔχοντες, ὧν ἂν οἴωνται κρείττους ἔσεσθαι, ἄγουσ

whose property is not forfeit, he shall incur the same penalties as if he did the like in our own territory."[1]

Here, men of Athens, is another law humanely and wisely framed, which the defendant will be shown to have transgressed likewise. "If any one"—it says—"shall so treat any homicide who has quitted the country, whose property is not forfeit." It means one who has withdrawn on account of an involuntary homicide. By what does this appear? First, by its saying "who has quitted the country," and not "who is in exile;" secondly, by the definition, "whose property is not forfeit;" for the estate of those who commit homicide by design is confiscate. Therefore the legislator must be speaking of involuntary homicides. And what are his words? "If any one beyond the boundaries"—he says—"shall pursue or seize or carry off." And what means this expression "beyond the boundaries?" The boundary-line for all homicides is exclusion from the country of the deceased. From this he permits them to be chased and taken into custody, but beyond the limits he allows neither to be done. And if any one acts contrary to this, he has given the same redress as if he injured the party while staying at home, declaring that he shall incur the like penalty as if he did it at home. Now were Aristocrates the defendant to be asked, (and don't think it a foolish question.) first—if he knows whether any one will kill Charidemus or whether he will come to some other end—he would answer probably, that he did not know. We will assume however that some one will kill him. Again, do you know, Aristocrates, whether the person who is to do it will be a voluntary or an involuntary agent, an alien or a citizen? It is impossible for you to say that you know. Then surely you ought to have added these particulars, saying, "if any one shall

καὶ φέρουσι χρήματ' αἰτοῦντες. Here the words *ἄγουσι καὶ φέρουσι* express the seizure and detention of the persons, *χρήματ' αἰτοῦντες* the purpose of such violence.

[1] *Φόνος* signifies every kind of homicide, whether voluntary or accidental, whether justifiable or criminal. In this law therefore, which, according to the argument of Demosthenes, applies only to involuntary homicide, *ἀνδροφόνος* cannot be translated *murderer*, as in the previous laws: for *murder* in our law signifies always, "the killing a man unlawfully with malice prepense."

kill voluntarily or involuntarily, justly or unjustly, being a citizen or an alien;"[1] so that, by whomsoever the deed was done, he might have had justice according to law; but decidedly not, after a mere term of accusation, to have added "let him be liable to arrest." For what boundary have you left by this clause, when the law quite plainly prohibits all pursuit beyond the boundaries, and yet you allow arrest in any place? And the law forbids not only pursuit, but even arrest, beyond the boundaries: whereas by your decree any one who pleases may get a man who has unintentionally taken life delivered into his hands, and carry him by force into the country of the deceased. Do you not confound all human judgment, and exclude the motives according to which every action is honourable or disgraceful?[2] You see, Athenians, that so it is not merely upon questions of homicide but upon all questions:—"If a man commits an assault, being the aggressor," the law says; implying that, if he defended himself, he is not guilty. "If a man speaks abusive words"—"which are false," the lawgiver adds; as much as to say that, if they are true, it is justifiable. "If a man kills another by design;" as much as to say that, if he does so unintentionally, it is different. "If one damages

[1] According to Markland, who is followed by Taylor and Reiske, the construction of this sentence is, *προσῆκέ σε, γράφοντα ἐάν τις ἀποκτείνῃ, προσγράψαι. ἄκων ἢ ἕκων*, &c., and the correct translation, "Oportuit te, cùm scribebas *si quis occiderit*, adscripsisse, *utrum invitus an volens*." &c. If this construction be even admissible, I think the other is more suitable to the arrangement of the words. It may be objected that *γράφοντα* is redundant in my way of taking it. So it is, if *ταῦτα* be used prospectively; and even then the redundancy is not inelegant. Yet I rather incline to understand *ταῦτα* as retrospective, the exact sense being, "you ought to have added those particulars which I just mentioned, to wit, by a clause such as the following,—*if any one shall kill intentionally or unintentionally*," &c. The full meaning of the orator is, "you ought to have provided, that if a man killed another intentionally, he should be dealt with in such a way; if unintentionally, in such another way, &c.; so that in every case the homicide might have had his due."

[2] Auger: "Ne confondez-vous pas tous les droits humains? ne supprimez-vous pas les circonstances qui rendent chaque action bonne ou mauvaise?"

Pabst: *Verwirrst Du sonach nicht alle menschlichen Rechtsbestimmungen, und hebst Du nicht die Bedingung auf, durch welche jede That als rühmlich oder schimpflich gethan erscheint?*

another intentionally without just cause." In every case we shall find the motive determining the thing. But not so with you. Your words are unqualified—"if any one shall kill Charidemus, let him be arrested"—though he may have done it unintentionally, though justly, though in self-defence, though for a cause which the law allows, though in any manner whatever.

Read the law that follows:

THE LAW.[1]

"And no persons shall be liable to any legal proceedings for homicide, who exhibit an information against exiles, in case any one return whither it is not lawful."

This, men of Athens, is a law of Draco; so are all the laws of homicide which I have cited; and you must look at his meaning. Those who exhibit an information against murderers returning whither it is not lawful, he says, shall not be liable to proceedings for homicide. Here he declares two principles of law, both of which the defendant has violated in his decree: first, he allows one to exhibit

[1] This law, says Taylor, is to be taken in connexion with that which is cited above, p. 631 of the Greek text, p. 178 of this translation. It having there been enacted, that whoever kills or causes the death of a murderer, whilst he keeps away from Athens and the other specially forbidden places, shall be liable to the ordinary punishment for killing an Athenian citizen; it is here declared that, if a man exiled for murder returns to Athens, and an information be exhibited against him, (which was the proper and legal course to be taken against him in such case,) the party who exhibits the information shall not be subject to the penalties of the former law, even though he cause the accused to be put to death. It may seem to have been unnecessary to introduce this saving clause; for, if the process in question was authorized by law, it would be absurd to hold that the party instituting it could be liable to punishment. We must suppose then, either that it was adopted *ex abundanti cautelâ*, as the lawyers say; or that the object was to protect the informer against the penalties of homicide, even though the party informed against should suffer unjustly by the law which he set in motion, leaving him at the same time liable to other penalties. The Athenians, like the rest of the Greeks, were anxious to prevent the return of all such persons as were exiled for state-crime or murder. A part of the Heliastic oath was: *οὐδὲ τοὺς φεύγοντας κατάξω, οὐδὲ ὧν θάνατος κατέγνωσται.* And they were specially exempted from the act of amnesty passed upon the expulsion of the Tyrants.

See Taylor's note in the Apparatus Criticus, and as to the process of *ἔνδειξις*, see Appendix VIII.

an information against the murderer, but not to carry him off in one's own custody; secondly, even this he only allows when a man returns where it is not lawful, not in any place that he goes to. And where is it not lawful to go? To the city from which he is exiled. Where does he very plainly show this? "In case any one return," he says. This cannot be referred to any other than the city from which a man is exiled: for it is impossible surely to return to one from which you were never banished at all. The law therefore has allowed an information, and only in case a man returns where it is not lawful: Aristocrates has it—let him be subject to arrest even in places to which no law forbids him to flee.

Read another law:

THE LAW.

"If one man shall kill another unintentionally in a prize-fight, or slaying him in an ambuscade[1] or in battle by mistake, or after catching him with his wife, or with his mother, or with a sister, or with a daughter, or with a concubine whom he keeps to beget free-born children,[2] he shall not go into exile for homicide on such account."

Many laws, O Athenians, are violated by the decree, but none more completely than the law which has just been read. For although the law so plainly gives out and

[1] Ὀδὸς was anciently used as synonymous with λόχος, "an ambuscade," as in Homer's Iliad, i. 151:

Πῶς τίς τοι πρόφρων ἔπεσιν πείθηται Ἀχαιῶν,
Ἢ ὁδὸν ἐλθέμεναι, ἢ ἀνδράσιν ἶφι μάχεσθαι;

With which compare v. 226:

Οὔτε ποτ' εἰς πόλεμον ἅμα λαῷ θωρηχθῆναι
Οὔτε λόχονδ' ἰέναι συν ἀριστήεσσιν Ἀχαιῶν
Τέτληκας θυμῷ.

Such is the interpretation given by the ancient grammarians, which is adopted by Taylor, Heyne, and Schaefer. Some critics have rejected it, and among them Reiske, who understands ὁδῷ in the common sense of the public road. Auger: "dans le chemin en le renversant." Pabst: *auf dem Marsche einen niederwirft.* Schaefer says that the whole art of war in ancient times consisted in two operations, ambuscade and open fight, as is shown by the Homeric verses; and the reason why Demosthenes has not explained this clause, as he has the other parts of the law, was, that the verses of Homer were so familiar to his hearers.

[2] They would enjoy the political franchise. if their mother was an Athenian, though they might not have heritable rights.

declares, under what circumstances it shall be lawful to kill, the defendant overlooked all this, and has inserted the penal clause without mentioning how the death is effected. Yet mark how fairly and righteously all the distinctions were drawn by their author. He laid it down, that it was no crime to kill a man in a prize-fight. Why? He looked not at the event, but at the intention of the party. And what is this? To vanquish without taking life, not to kill. If the adversary was too weak to endure the struggle for victory, he considered that he was the cause of his own misfortune, and therefore allowed him no redress. Again—"if in battle by mistake," he says—such a person also shall be deemed pure. Properly: for if I destroyed a man supposing him to be one of the enemy, I deserve, not to be brought to trial, but to obtain forgiveness. "Or catching with his wife," he says, "or with his mother, or sister, or daughter, or with a concubine whom he keeps to beget free-born children"—one that kills on any of these accounts[1] he lets off with impunity, acquitting him, O Athenians, with the most perfect justice. Wherefore so? In defence of those for whom we fight with the enemy, to protect them from insult and indignity, he allows us to kill even our own people, if they insult and outrage them contrary to law. For since there is no race of friends and foes, but it is their actions that make the one and the other, the law permits us to punish as enemies those who commit acts of hostility. It is monstrous then, when there are so many causes for which it is lawful to kill other men, that Charidemus should be the only person in the world whom even for these causes it is not lawful to kill.

Suppose it should happen to Charidemus, as doubtless it has happened to others before now; that he should quit Thrace and take up his abode in some city, where, though no longer possessing that authority by which he does so many things forbidden by the laws, he will be driven to make the attempt by the force of his habits and desires: won't people be obliged to submit to his outrages in silence? At least it will not be safe to kill him, or to seek the

[1] Ἐπὶ τούτων τῳ. So Pabst: *unter solchen Umständen.* Yet perhaps it may signify, "surprising him with any of these"—the wife or mother, &c.

redress which the law affords, by reason of this decree. If I am met with the objection—where can such things take place?—what prevents me also saying, who can slay Charidemus? However, don't let us look at that: but, since the decree that we are trying was passed, not on account of anything which had taken place, but to provide for something which no one is sure ever will take place, let the chance of the future be common to both; to this let us conform our expectations humanly, and look at it as if both the one contingency and the other may possibly happen.[1] At all events, if you rescind the decree, should any disaster befal Charidemus, you have the means which the laws give to avenge him: if you let it stand, in case he should injure any one in his lifetime, the legal remedy of the oppressed is gone. In every way therefore the decree is opposed to the laws, and it is your interest to set it aside.

Read the next law:

THE LAW.

"And if one resisting any unlawful seizure or violence shall immediately kill the aggressor, his death shall not be punishable."

Here are other causes for which it is lawful to take life If a man resisting any unlawful seizure or violence shall immediately kill the aggressor, he orders that the death shall not be punishable. Pray observe, how wisely. By his having first mentioned the causes for which life may be taken, and then adding the "immediately," he left no time for contriving any foul play: by the word "resisting," it is clear that he gives the power to the aggrieved party, not to any one else. The law has therefore given permission to kill immediately in self-defence; Aristocrates has it simply, "if any one shall kill," even though with justice or as the laws allow. Oh, but we are cavilling; for whom will Charidemus attack or seize unjustly? Everybody. For you are of course aware, that all military commanders lay violent hands upon those whom they think they can

[1] Auger: "Mais enfin ces reflexions sont inutiles; et puisque le décret attaqué a pour objet une action absolument incertaine, et non une action déjà faite, laissons à chaque evénement son incertitude, réglons sur elle notre attente, et, dans notre ignorance de l'avenir, examinons les faits de part et d'autre comme pouvant arriver."

overpower, to make requisitions of money. Is it not shameful then—(O earth and heaven!)—is it not manifestly illegal, contrary not only to the written law, but to the common law of all mankind, that I am not at liberty to resist a person who seizes or forcibly carries off my property, treating me as an enemy?—for even in this way it will not be lawful to kill Charidemus; but, should he iniquitously seize and make booty of any man's property, the party killing him will be liable to arrest, although the law gives impunity under such circumstances.

Read the next law:

THE LAW.

"Whatever person, whether he be a magistrate or in a private station, shall cause this statute to be defeated, or shall alter it, he shall be disfranchised, and his children likewise, and his property shall be forfeit."

You have heard the law, O Athenians, saying positively—whatever person, whether he be a magistrate or in a private station, shall cause this statute to be defeated, or shall alter it, let him be disfranchised and his children likewise, and let his property be forfeit. Does it appear to you, that the framer of the law took small or slight pains to establish its validity, and to prevent its being defeated or altered? Nevertheless Aristocrates the defendant, but little regarding him, does alter and defeat it. For what is altering but this; when a man allows punishment out of the appointed tribunals and limits of banishment, when he makes people outlaws,[1] and does away with their right to be heard? What is defeating but this; when a man frames a complete series of clauses contrary to the enactments of the law?

And not only these laws has he violated, O Athenians, but many more, which I have not exhibited on account of the number. However I will sum it up in a few words. All the laws concerning the courts of homicide, which require the parties to be summoned or to give testimony or make oath,[2] or which give any other direction, he has transgressed

[1] Ἐκδότους, liable to be surrendered on demand. Pabst: *vogelfrei.*

[2] Διωμοσία was a legal term for the oaths taken by both parties at the ἀνάκρισις. Sometimes it was applied to the oath taken by each party

and violated by the present decree. For where there is no summons, no trial, no testimony of a witness, no swearing of an oath, but immediately after the charge the punishment is ordered, and one too which the laws prohibit, what else can one say? All these proceedings take place before five courts, as appointed by the laws. But perhaps it may be said—the courts are of no account, and are not founded in justice, whereas the defendant's ordinances are just and honourable. Quite the contrary. I don't know that there has ever been a decree passed in Athens more shameful than the defendant's; while, of all tribunals that exist among mankind, none can be shown more august or equitable than these. I would briefly advert to certain facts, the mention of which brings honour and renown to the commonwealth, and which you will be better pleased to hear. I will begin with that which will throw the fullest light upon the subject, after referring to the grant which has been made to Charidemus.

We, men of Athens, created Charidemus a citizen, and by means of such grant we admitted him to civil and religious communion, to partake in our legal rights, in all that we ourselves enjoy. There are many institutions among us of a character not to be found elsewhere, but one there is the most peculiar of all, and the most highly venerable, the court of Areopagus, respecting which we have more glorious traditions and myths, and more honourable testimonies of our own, than we have of any other tribunal;[1] of which it is proper you should hear one or two by way of example. In ancient times, as we are informed by tradition, the Gods in this tribunal alone deigned both to

and more peculiarly to the solemn oath sworn in cases of homicide, of which Demosthenes speaks a little further on.

See Meier and Schömann, Att. Proc. p. 624, and the Eighth and Ninth Appendices to this Volume.

[1] The Areopagus was frequently praised both by orators and poets. See Vol. II. Appendix III. I suspect Demosthenes in this passage to have had Sophocles in his eye; Œdipus, Colon. 947:

Τοιοῦτον αὐτοῖς Ἄρεος εὔβουλον πάγον
ἐγὼ ξυνῄδη χθόνιον ὄνθ', ὃς οὐκ ἐᾷ
Τοιούσδ' ἀλήτας τῇδ' ὁμοῦ ναίειν πόλει.

Cicero, praising the conduct of the Roman senate, calls it "a perfect Areopagus." Epist. ad Attic. i. 14. "Senatus ἄρειος πάγος. Nihil constantius, nihil severius, nihil fortius."

demand and to render justice for murder, and to sit in judgment upon disputes between each other; so says the legend: Neptune demanded justice of Mars on behalf of his son Halirrhothius,[1] and the twelve Gods sat in judgment between the Furies and Orestes. Such are its ancient glories: now for those of later date.

This tribunal neither despot nor oligarchy nor democracy has ventured to deprive of its jurisdiction in murder: all people consider that any process of their own invention would be less efficacious than that devised by the Areopagites. In addition to such important facts, here only has it occurred that neither a convicted criminal nor a defeated prosecutor ever established a charge against the propriety of the verdict.[2] In contempt of this jurisdiction and of the legal remedies attached to it, the author of the present decree has empowered Charidemus in his lifetime to do what he pleases, and, in case any disaster should befal him, has given the means of persecution to his friends.

Just consider. Of course you all know that in the Areopagus, where the law allows and requires proceedings to be taken for murder, in the first place the party who charges another with any such crime will make oath with imprecations upon himself and his family and his house; in the next place it is no ordinary oath that he has to swear, but such as is taken upon no other occasion; for he must stand upon the entrails of a boar and a ram and a bull,[3] and they must have been immolated by the proper persons and on

[1] Mars killed him, according to the fable, to avenge the violence offered to his daughter Alcippe. The place where the murder was tried was hence called *Areopagus*, or the Hill of Mars. Apollodorus, Myth. iii. 14. 2.

[2] "Negavit hoc postremis suis temporibus ipse Demosthenes, cùm ab Areopagitico Senatu acceptæ ab Harpalo pecuniæ damnaretur."—*Reiske.*

"Fortasse etiam prius fuerunt qui negarent, ἀλλ' οὐδεὶς ἐξέλεγξεν. *Schaefer.*

[3] "A Græcis igitur Romani acceperunt sua Suovetaurilia, ut et plerosque deos suos."—*Palmer.*

As to the ceremonies customary among the Greeks in the taking of oaths, I refer the reader to Article *Jusjurandum* (Greek) in the Archæological Dictionary; which was written by me, but in the second edition has been appropriated (it is to be hoped inadvertently) by the Editor to himself.

the appointed days, so that both in regard to the time and the officiating persons every due solemnity may have been observed. And even then the party who has sworn such an oath is not yet believed, but, in case he should be convicted of untruth, he will carry away the curse of perjury upon his children and his family, and that is all he will get by it. If his accusation be considered just, and he obtain a conviction for murder, even then he gets no power over the condemned, who for punishment is given up to the laws and to the persons charged with that office : he may behold the condemned suffering the penalty which the law imposes, but nothing further. Such is the duty assigned to the prosecutor : the accused has to take the oath in like manner, but, after he has delivered his first speech, he is at liberty to withdraw, and neither the prosecutor nor the judges nor any persons whatever have authority to prevent him. How comes it to be so, men of Athens? Because they that made the ordinances originally, whoever they were, whether Heroes or Gods, did not press upon the unfortunate, but humanely, as far as they could with propriety, alleviated their miseries. All these regulations, so fair and so equitable, the framer of the present decree is shown to have infringed ; for not a single portion of them is adopted in his decree.

First therefore this one tribunal, its written laws and unwritten usages, have been violated by the decree.

A second tribunal also, the court of Palladium,[1] for the trial of involuntary homicide, he supersedes, as I shall show, and infringes the laws which are administered in it. For here the practice is, first for the parties to swear, then to plead, and lastly for the court to decide : of which there is

[1] Of the jurisdiction of these four courts, τὸ ἐπὶ Παλλαδίῳ, τὸ ἐπὶ Δελφινίῳ, τὸ ἐπὶ Πρυτανείῳ, τὸ ἐν Φρεαττοῖ, I shall speak in Appendix VIII. Of their origin some account is given in Pausanias (i. 28), as well as in Harpocration and elsewhere.

The first of them was held in a temple of Pallas, where, according to the story, was deposited the Palladium brought from Troy by Diomed and his followers, who, landing on the coast of Attica, were inadvertently attacked, and some of them slain, by Demophoon and the Athenians.

The second was held in a temple of Apollo Delphinius, evidently on account of the protection afforded by the Delphic god to Orestes.

The third was held in a room of the Prytaneum, or city-hall.

The fourth was by the sea-shore in Piræus, and received its name ἀπὸ τοῦ φρέατος, because it was held in a pit.

nothing in this man's decree. If the accused be convicted and found to have done the deed, neither the prosecutor nor any one else has power over him, but only the law. And what does the law command? That one convicted of involuntary homicide shall on certain stated days leave the country by an appointed road, and remain in exile until he has appeased certain of the relatives of the deceased:[1] then it permits him to return, not anyhow, but in a particular manner, ordering him to sacrifice and to be purified, and giving some other directions what must be done. Rightly, O men of Athens, does the law prescribe all this. For it is just to make the penalty of unintentional homicide less than that of intentional; and it is right to provide security for leaving the country before banishment; and for the returning exile to make atonement and purify himself by certain ceremonies, and for everything to be under the control of the laws, this and all of it is reasonable. Yet all these arrangements, planned so wisely by the original legislators, the defendant in framing his decree disregarded.

Here then have we two tribunals of high dignity and importance, and usages handed down from time immemorial, which he has impudently overridden.

There is also a third tribunal, one of the most awful sanctity, where a man acknowledges that he killed, but contends that he has done it lawfully. This is the court of Delphinium. It appears to me, men of the jury, that they who originally settled the law upon these subjects inquired in the first instance, whether no homicide could be deemed rightful, or whether a certain kind ought to be so deemed; considering then that Orestes, acknowledging to have killed his mother, gets a tribunal of Gods to try him and is acquitted, they held that some kind of homicide was justifiable; for Gods would certainly not give a wrong verdict. Having come to that opinion, they defined in precise terms the causes for which it was lawful to kill. Aristocrates however makes no exception, but simply declares that, if any one shall kill Charidemus, (even though justly or as the laws

[1] Pabst: *bis er eine Person aus der Familie des Ermordeten für sich gewonnen hat.* Schaefer is inclined to read αἰδέσῃ, as the middle verb is elsewhere applied to the relatives forgiving the culprit. (See p. 645.) I don't agree with him.

allow,) he must be given up. Now to all actions and words there are two possible predicates,[1] namely of just and unjust. No single action or word can have both of them at the same time; (for how could the same thing be at once just and not just?) but everything before trial is supposed to have one or the other;[2] if it appear to have the quality of injustice, it is set down as base, if of justice, as honourable and good. You however attached neither of those conditions to the clause "if any one shall kill;" but having expressed the charge itself indefinitely, and having added immediately after, "that he may be lawfully apprehended," you have clearly treated this third tribunal and its usages with contempt.

There is a fourth besides these, the court in the Prytaneum, whose jurisdiction is as follows. If a stone or a piece of wood or iron or anything of the kind falls and strikes a man, and we are ignorant who threw it, but know and have in our possession the instrument of death, proceedings are taken against such instruments here. If then it is not right that inanimate and senseless things, when they lie under such a charge, should be left untried, surely it is impious and dreadful, that one who is possibly innocent, but who (assuming him to be guilty) is at all events a human being and gifted by fortune with the same nature as ourselves, should upon such a charge without hearing and judgment be given up to his accusers.

There is yet a fifth tribunal, which he has failed to respect, and I beg you to observe its character. It is that in Phreatto. Here, men of Athens, the law requires a person to take his trial, who has been exiled for involuntary homicide, and, before those who caused his banishment have pardoned him, incurs the charge of wilful murder. And the framer of these several ordinances did not, because it was impossible for the criminal to come to Athens, overlook his case, nor, because he had done some such act before, did he

[1] Pabst: *Es sind für alle menschliche Thaten und Reden zwei Seiten möglich, eine rechtliche und eine rechtswidrige.*

Auger: "Toute action et toute parole sont toujours accompagnées de l'une de ces deux qualités, de la justice et de l'injustice."

[2] Pabst: *Aber bei Prüfung jeder Sache setzt man voraus, dass dieselbe eine von beiden Seiten habe.*

Auger: "On examine laquelle des deux convient à chaque action."

at once take a similar charge against him for granted; but he found a means to keep religion unprofaned, and did not deprive the criminal of a hearing and trial. What did he then? He brought the judges to a spot to which the criminal might repair, appointing a certain place in Attica by the seaside, called Phreatto. The accused then sails up in a vessel and pleads, without touching the land; the judges hear and decide on shore. And if he is found guilty, he suffers the punishment of wilful murder, justly; if he is acquitted, he escapes that penalty, but undergoes the exile for his former homicide. Why, let me ask, have these arrangements been made so carefully? The contriver of them thought it was the same impiety to leave a guilty man at large, and to give up an innocent man for punishment before trial. Now, if for already declared homicides such anxiety is shown, that they may obtain a hearing and a trial and everything that is fair upon a subsequent charge, surely in the case of a man who has not been convicted, on whom no judgment has been passed, whether or no he did the deed, whether intentionally or unintentionally, it is outrageous to frame a decree for giving him up to his accusers.

In addition to all these legal remedies, there is also a sixth, which the defendant has equally set at nought by his decree. If a man has been ignorant of all the other courses, or if the times within which they must each be pursued have gone by, or if for any reason whatever he does not choose to adopt these methods of prosecution, but sees the homicide walking about in the temples and the market, it is lawful to carry him off to prison, but not to his own house or where he pleases, as you have allowed. And when he is brought to prison, he will suffer nothing there before trial, but, if he is found guilty, he will be punished with death; if the person who arrested him fails to get a fifth part of the votes, he will be mulcted in a thousand drachms. Aristocrates orders nothing of this kind, but that the one party may accuse without risk, and the other be given up instantly without trial. And if any persons or even a whole community shall interfere, to prevent the destruction of all these usages which I have enumerated, the abolition of all these tribunals which I have spoken of, which Gods established, and to which men have been resorting ever since, and

shall rescue the party thus illegally attacked and outraged, he has put in a clause to excommunicate them,[1] nor does he allow even them a hearing or a trial, but punishes them without trial immediately. How could there be a more shameful decree than this, or a more illegal one?

Have we any law yet remaining? Show me. There is one. Recite it.

THE LAW.

"If any one shall die a violent death, his relations shall be entitled to take hostages in that behalf, until they have either submitted to judgment for the homicide,[2] or given up the authors of it. And the taking of hostages shall extend to three, but not beyond."

There are many good laws, O Athenians, but I don't know that any is better or juster than this. Only see how equitably, how very humanely it is drawn. "If any man shall die a violent death," it says. First then, by adding this word "violent," he has given us an indication that he means "if unjustly." The relations, he says, shall be entitled in that behalf to take hostages, until they have either submitted to judgment for the homicide or given up the authors of it. Look how fairly. First he requires them to submit to judgment; secondly, if they do not like this, he orders them to give up the author; if they will not do either of these things, he says, the taking of hostages shall extend to three, but not beyond. Well then: every part of this law is contravened by the decree. For in the first place he writes, "if any one shall kill," but does not add "unjustly," or "violently," or anything at all. In the next place, before any demand of satisfaction, he orders that the party may be immediately apprehended. And in addition to this, while the law directs

[1] Ἔκσπονδον ἔγραψεν εἶναι. Pabst: *erklärt ihn für ausgeschlossen von den Verträgen und Rechten.* Auger: "les déclare exclus des traités."

[2] "Subaudi *παρ' οἷς ἂν τὸ πάθος γένηται*, ut p. 648, 17. Illi, apud quos cædes erit perpetrata, et a quibus tres cives abducentur pignoris loco futuri, donec pœnæ perempti dentur."—*Reiske.* Auger translates it: "les parents, pour venger sa mort, pourront faire prendre les personnes chez qui le meurtre s'est commis, jusqu'à ce qu'elles subissent elles-mêmes un jugement, ou qu'elles livrent le meurtrier." The nominative governing *ὑπόσχωσιν* and *ἐκδῶσι* is the word *ἄνδρες*, understood in *ἀνδροληψίας*. The hostages may be said to do themselves what the state does on their behalf.

that if the people among whom the disaster has occurred neither submit to judgment nor give up the authors of the crime, they shall be liable to have hostages taken from them to the number of three; Aristocrates lets them go unpunished, nay, he has left them out of account altogether; but those who have harboured a man already in exile, (for so I will assume,) according to the universal law which permits the receiving of an exile, he excludes from all connexion with Athens, if they will not deliver up the suppliant for punishment. Therefore, by his having no proviso as to the mode of killing, and by his not directing any trial or any demand of satisfaction, and by his allowing arrest in any place whatever, and by his punishing those that harbour and not those among whom the disaster occurred, in short by everything it is quite manifest, that here is another law violated by his decree.

Now read the next:

THE LAW.[1]

"And it shall not be lawful to propose any statute applying to a particular man, unless the same shall apply to all Athenians."

[1] A *privilegium*, or law specially made for a particular person, was forbidden by the Twelve Tables, as Cicero tells us, Orat. pro Domo, 17:

"Quo jure, quo more, quo exemplo, legem nominatim de capite civis indemnati tulisti? Vetant leges sacratæ, vetant duodecim tabulæ, leges privis hominibus irrogari: id est enim privilegium. Nemo unquam tulit: nihil est crudelius, nihil perniciosius, nihil quod minus hæc civitas ferre possit. Proscriptionis miserrimum nomen illud, et omnis acerbitas Sullani temporis, quid habet quod maximè sit insigne ad memoriam crudelitatis? Opinor pœnam in cives Romanos nominatim sine judicio constitutam."

Compare De Legibus, iii. 4. 19; Brutus, 23; Orat. pro Sextio, 30.

It appears from these passages that Cicero understood the word *privilegium* as used in a bad sense only, of a penal law passed against an individual, such as the bills of pains and penalties with which extraordinary offences have occasionally been visited in our own country; as to the propriety of which I shall refer the reader to Hallam's Constitutional History of England, vol. ii. p. 149. In the like sense it was understood by Blackstone, who writes in his Commentaries, i. 46:— "There is a still more unreasonable method than this, which is called making of laws *ex post factò*: when after an action (indifferent in itself) is committed, the legislator then for the first time declares it to have been a crime, and inflicts a punishment upon the person who has committed it. Here it is impossible that the party could foresee that an

The law which has just been read is not another of the laws of homicide, men of the jury, yet it is fully as good, if any law ever was so. For the proposer of it thought that, as other constitutional rights are equally shared by all, so ought every man to share equally in the laws; and therefore he made it unlawful to propose any statute applying to a particular man, unless the same should apply to all Athenians. Since then it is admitted that decrees ought to be framed according to the laws, a man who draws a special one in favour of Charidemus, which will not extend to all of you, clearly must have moved in contravention of this law. For it can never be constitutional to put that in a decree, which cannot even be the subject of a statute.

Read the next law—or are these all?

THE LAW.

"And no decree, either of the Council or the People, shall have greater authority than a law."

action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had therefore no cause to abstain from it, and all punishment for not abstaining must of consequence be cruel and unjust." To which he adds in a note, "Such laws among the Romans were denominated *Privilegia.*" Strictly however *Privilegium* was a general term, corresponding to the νόμος ἐπ' ἀνδρὶ τεθεὶς of the Athenian, which might be a law either for the advantage or the disadvantage of the party concerned. A law passed for a man's benefit, though undeserved, could scarcely be so odious as one passed for the opposite purpose; and hence the term came to have a one-sided application.

It does not appear to me that Demosthenes makes a fair use of the statute which he quotes. It is true indeed that all laws should as far as possible be general in their application, and we might well expect that it would be the policy of the Athenians to observe such a rule. When however it is contended, that, as there cannot be a law affecting an individual only, *à fortiori* there cannot be a decree for such a purpose, this I take to be a fallacy. To grant special honours, privileges, or immunities for some extraordinary merit or service, becomes necessary occasionally in all states, and was, as we know, the practice of the Athenians. Now the proper way of effecting this object was to pass, not a law, but a decree, in order to preserve that very distinction between laws and decrees which Demosthenes himself so strongly insists upon. In England peculiar powers or privileges are conferred by private Acts of Parliament. At Athens there was no such thing as a private statute. The same purpose could be effected by a decree.

Even a *privilegium* might be obtained by the suffrages of six thousand citizens voting by ballot. (See Andocides De Mysteriis, 87, Ed Bekker.) Demosthenes cites only a part of the law.

Put it down. It will be short and easy work, I expect, men of the jury, to show that this law has been violated by the decree. For when there are so many laws, and when a man has prepared a motion in defiance of them all, and included a private concern in a decree, how can it be doubted that he requires a decree to have greater authority than a law?

I wish also to show you one or two of the decrees which have been drawn up for real benefactors of the commonwealth, that you may see it is easy to frame just resolutions, when the sole purpose of framing them is to honour a man and impart to him the rights that we enjoy ourselves, not under the show of doing this to practise trickery and fraud. Read these decrees. That it may not be long for you to hear, from each of the decrees is selected just that part which concerns my charge against the defendant. Read.

[*Extracts are here read from various decrees.*]

You see, men of Athens, that all have drawn them up in the same manner: (let there be the same redress for him, it says, as if the party killed an Athenian:) leaving your existing laws upon this head in force, and even setting off their dignity, since they esteemed it as a boon to allow any one to share them. Not so Aristocrates. He vilifies them as much as he possibly can; (certainly he treated them as worthless when he took pains to draw a special decree:) and even disparages the grant, by which you have bestowed citizenship upon Charidemus. For, as if you were only too happy and even owed him an obligation, he has proposed that you should guard his person, so that he may do what he likes with impunity. Is not this acting as I say?

I know, men of Athens, Aristocrates will not be able to show that he has not plainly transgressed the laws by his decree, but will endeavour to keep out of sight the most grievous of his delinquencies, namely, his not having in the whole of his decree appointed any trial of such a charge. I do not deem it necessary to say much upon this point, but I will show clearly from the decree itself, that even he does not suppose there is any trial for the accused party. For he has it—"if any one shall kill Charidemus, he may be lawfully apprehended, and if any people shall rescue him,

whether they be individuals or a community, they shall be excluded from our connexion"—not, unless they surrender for trial the party rescued, but absolutely at once. Now, if he were allowing a trial and not taking it away, he would have put in the penal clause against the rescuers, in the event only of their not producing the rescued party for trial.

I believe that he will urge this plea also, and try hard to mislead you by it—that the decree is of no effect, for it is an order of Council, and the law declares that resolutions of the Council shall be in force for a year, so that, even if you acquit him now, the state will suffer no detriment by the decree.[1] In answer to which I would have you remember—Aristocrates drew this decree, not that it might be void and thus no harm should befal you, (for he could have abstained from drawing any at all, if he had the good of the commonwealth in view,) but that you might be deluded and certain people execute projects adverse to your interests. The parties who have indicted the decree and caused delay, and through whom it is invalid, are we. It would be absurd then, if that for which thanks is due to us should be the safety of our opponents. Nor indeed is the thing so simple as one imagines. If there was no one else that would draw decrees like him without regard to your interests, the thing would have been less serious perhaps: but, as there are many such persons, it is not well for you to leave the decree unrepealed. For who will not draw decrees boldly in future, when this one is adjudged blameless? Who will refuse to ask your votes upon them? Who will indict them? You have not therefore to consider, whether this decree is void by lapse of time, but to reflect that by your verdict upon this, if you pronounce it legal, you will give impunity to men who may wish to wrong you hereafter.

[1] The supposed argument of Aristocrates would be indeed absurd. For if the jury acquitted him upon his trial, the decree would be pronounced legal and remain in force: if either he declined to support it, or a verdict were found against him, then the decree certainly would have had no more effect than a Probouleuma, but that, as the orator says, would be owing entirely to the prosecution, and no thanks for it to Aristocrates. One is inclined to think that Demosthenes is here raising up a straw, in order to blow it down again: yet it is difficult to judge how far it might be necessary to caution the jurors even against so gross a fallacy.

Again, Athenians: it has not escaped me that Aristocrates, having no straightforward or honest defence to urge, will resort to fallacies of this kind—that similar decrees have been drawn up by many persons before. This, men of Athens, is no proof that the defendant has made a legal motion; as there are many causes through which you have often been led into error. For example: if any one of the condemned decrees had not been indicted before you, it would have been in force, I presume: and yet it must have been moved contrary to law. Or, if any was indicted, but either by the collusion of the prosecutor or by his incompetency to manage the case escaped condemnation, this does not prevent its being illegal. Were not the judges then true to their oaths? Yes. How so? I will explain. They are sworn to decide according to the best of their judgment; but their judicial opinion is formed from what they hear; therefore, when they give their verdict according to this, they act conscientiously. Every one has a clear conscience, who has not voted contrary to his opinion either from enmity or favour or any other unrighteous cause. If, having an instructor, he was left in ignorance of any point, he ought not to be punished for his misunderstanding: it is the person who, knowing the truth, has betrayed the judges or leads them astray, that is liable to the curse. Therefore in every assembly the crier pronounces a curse, not upon those who are misled, but upon those who speak to mislead either the Council or the People or the Jury. Don't let it be told you then, that such decrees have been passed; let it be shown that they are lawful. Don't let them plead that other men have pronounced former decrees to be valid; but require them to satisfy you, that their arguments upon this decree are juster than ours. If they are unable to do so, it is not right for you, I think, to let the delusion of others prevail over your own understanding. Besides, as it appears to me, it is sheer impudence to argue in such a way, that similar decrees have been passed by others before. It is not because the laws have been at some former time transgressed, and you have followed the precedent, that you ought to be acquitted: on the contrary, you should be convicted all the more on that account. For as, if any of the former parties had been condemned, you

would not have framed this motion, so, if you are convicted now, no one will frame such again.[1]

That Aristocrates has drawn his decree plainly in defiance of all the laws, he will not be able, I think, to deny: but I have seen a man before now, O Athenians, who upon his trial for an illegal measure, when he was convicted by the laws, urged and insisted strongly that what he had proposed was for your advantage: a foolish, or rather an impudent line of argument, I take it; for, even if his points are good in all other respects, inasmuch as you are sworn to decide according to the laws, and he asks you to confirm a decree which he himself cannot show to be rightfully drawn, it can hardly be for your good, since you ought to set the highest value upon the observance of your oaths: at the same time this impudence has a sort of reasonableness about it. To the defendant however even this line of argument will not be open: for the decree, entirely opposed as it is to the laws, is more injurious than illegal. And this also I will prove to you immediately. That I may make my meaning clear in the fewest possible words, I will mention an example familiar to you all.

You know it is good for the commonwealth, that neither the Thebans nor the Lacedæmonians should be powerful; but that the one should have the Phocians for a counterpoise, the other some other people; for by such a state of things your safety and preeminence are established. Be sure then, it is equally advantageous for your countrymen of Chersonesus, that none of the Thracians should be powerful: for their mutual quarrels and jealousies are the best and firmest of all safeguards for the Chersonese. This decree however, by giving security to the chief minister of Cersobleptes, and putting the generals of the other princes in fear and dread of being accused, renders the latter powerless, and the former (a single monarch) strong.

That you may not be greatly surprised at your decrees

[1] See ante, p. 141. To the passages there cited may be added the speech of Angelo in Measure for Measure, Act II. Scene 2:—

> The law hath not been dead, tho' it hath slept:
> How many had not dared to do that evil,
> If the first man that did th' edict infringe
> Had answer'd for the deed.

having so important an effect, I will remind you of a circumstance which you are all acquainted with. When Miltocythes revolted from Cotys, (the war had then lasted for some time, Ergophilus had been removed, and Autocles was about to sail from Athens as commander,) a certain decree was framed here, under the terror of which Miltocythes, thinking that you were not on his side, withdrew,[1] and Cotys got possession of the Sacred Mountain and the treasures. Afterwards, men of Athens, Autocles was brought to trial for having caused the ruin of Miltocythes; the time for an indictment against the author of the decree had expired, and the thing had taken a ruinous turn for the commonwealth.

Be assured then that now, unless you repeal this decree, it will marvellously discourage both the princes and their generals: for they will imagine that they are wholly disregarded, and that you are turning round to Cersobleptes. If in consequence of such belief they should yield up their kingdom when Cersobleptes takes an opportunity of attacking them, see again what will happen. Let me suppose that Cersobleptes commits hostilities against us, which he is more likely to do than otherwise if he has the means,[2] shall we not have recourse to them, and strive by their means to weaken him? Suppose then they should say to us—"You, Athenians, not only refused to succour us when we were attacked, but made it wofully perilous for us to defend ourselves, by passing a decree that, if any one killed the man who was opposing your interests and ours, he might lawfully be apprehended: you are not entitled therefore to call for our aid in an affair which you managed so badly both for your-

[1] Grote thinks that ἀπῆλθε means "departed from Athens," implying that Miltocythes had come there in person to negotiate. (History of Greece, x. 513, note.) I rather understand it to mean, "withdrew from the Sacred Mountain."

[2] Ὃ μᾶλλον ἐλπὶς ἢ μὴ δυνηθέντα ποιῆσαι. I follow Schaefer's interpretation. The words are perhaps capable of another—"which he is more likely to do then than if he had no power;" *i.e.* "he will be more likely to attack us when he has expelled the other princes from their dominions, and thus obtained an accession to his power, than if he had no such accession." Pabst, reading (as it seems) ὃ μᾶλλον εἰκὸς ἐλπίσαντα ἢ μὴ δυνηθέντα ποιῆσαι: *wovon man wohl mit mehr Wahrscheinlichkeit annehmen kann, dass er es wirklich zur Ausführung bringen wird, sobald er sich nur auf die Ausführbarkeit Hoffnung macht, als dass er es, im Fall es wirklich in seiner Macht steht, unterlassen werde.* Auger: "il est probable qu'il le fera s'il le peut, et qu'il n'attend que le moment."

selves and for us."—Tell me; if they should say this, will not their language be juster than ours? I imagine so.

Nor can you allege, that it was very natural you should be tricked and deluded. For if you had nothing else to guide your calculations, and were unable of yourselves to comprehend the questions, you had an example before your eyes in these Olynthians, for whom what has Philip done and how do they treat him? He did not restore Potidæa to them at a time when he was no longer able to withhold it, as Cersobleptes restored the Chersonese to you; but after he had expended large sums in the war with you, when he had taken and might have held it himself, he delivered it up, and never attempted to do anything else. Yet they—as long as his power appeared compatible with their trusting him, so long did they remain his allies and fight with us on his account: now that they have seen him grow too mighty to be trusted, so far from voting that, whoever kills any of the persons who have helped to establish his empire may be arrested in the dominions of their allies, they have made friends of you, who they know would most gladly kill both Philip's friends and Philip himself, and they promise to make you their allies also. Then are Olynthians able to foresee the future, and will you who are Athenians not do the same? It would be disgraceful for a people who are distinguished above others for their political wisdom to display less acquaintance with their own interests than the Olynthians.

I hear also that he will say something of the same kind that Aristomachus said formerly in his address to you; that it is impossible Cersobleptes will ever choose to be your enemy by attempting to deprive you of Chersonesus; for, even if he could take and hold it, it would be of no advantage to him. The revenue from Chersonesus is not above thirty talents, when it is not at war; if at war, the revenue is nothing; while from the seaports, which would then be closed, the revenue is more than three hundred talents: they wonder therefore (so they will put it), what he could mean by choosing to get small profits and be at war, when he might get larger profits and be your friend.

I could assign many reasons which should induce us to be mistrustful, as I conceive, rather than to put confidence in these men and suffer Cersobleptes to become great: however I

will mention that which most readily occurs to me. I needn't ask, men of Athens, if you know Philip of Macedon. It was surely much more to his advantage to receive the revenues of all Macedonia in peace, than to receive those of Amphipolis with peril, and more desirable for him to be connected with you his hereditary allies, than with the Thessalians who formerly expelled his father. Independently of this, it is notorious that you, Athenians, never betrayed any of your friends, while the Thessalians have betrayed all theirs. And yet, even under these circumstances, you see that he has chosen to get small profits and have treacherous friends and incur danger, in preference to living in security. What can be the cause?—Certainly there is no very obvious way of accounting for it. The reason is this, men of Athens. There are two advantages for all men, one, the chief and greatest of all, prosperity, the other, inferior to that but greater than all besides, prudence; but men do not get both together, and no prosperous person puts any bound or limit to his cupidity; therefore many, by aiming at greater things, lose often what they have already.

And what need to mention Philip or any one else? The father even of Cersobleptes, Cotys, whenever he was engaged in quarrels, sent ambassadors and was ready to do anything, and perceived then how contrary it was to his interest to go to war with Athens: but as soon as he was master of Thrace, then would he attack cities and encroach upon us, then would he vent his drunken fury upon himself first and us next, then was he for conquering the whole country, the thing was inexplicable. For those who commence unjust undertakings with views of ambition do not usually take into account the difficulties, but only the results of success. Therefore I would have your measures so taken, that, if Cersobleptes determines to act properly by you, he will suffer no wrong at your hands, but, if he foolishly attacks you, he may not be beyond the reach of punishment.

I will read you the letter which Cotys sent when Miltocythes had revolted, and that which he sent after getting mastery of the whole kingdom, when he wrote to Timomachus and captured your fortresses.[1]

[1] Ἣν regitur ab antegresso ἔπεμψε: ad πέμψας autem subaudias, si placet, (neque enim necesse est), αὐτήν. Apparet Thracem priores

[*The Letter.*]

Seeing this example, men of Athens, and remembering that Philip, when he besieged Amphipolis, pretended he was besieging it that he might give it up to you, but, after he had taken it, deprived you of Potidæa also, if you will hearken to me, you will wish to have that security, which they say Philocrates the son of Ephialtes proposed once to the Lacedæmonians. The story is that, when the Lacedæmonians were trying to overreach him and offered him any security that he would like to take, he said that in his opinion the only security was, to show how they would be disabled from injuring him if they wished it; for he was certain they would always wish it, and therefore there could be no security, as long as they had the power. Such a security, if you follow my advice, will you hold against this Thracian, and not care to know what his feelings to you would be, if he got the monarchy of all Thrace.

That it is altogether an act of insanity to frame such decrees and grant such honours, may be easily seen by many examples. Of course, men of Athens, you all know as well as I do, that formerly you created Cotys a citizen, evidently at that time thinking him friendly and well disposed to you. Nay, you even honoured him with golden crowns, which you would never have done had you thought him an enemy. Nevertheless, when he showed himself to be an impious reprobate and loaded you with injuries, you made his murderers, Python and Heraclides of Ænos, citizens of Athens, and bestowed golden crowns upon them, as benefactors. Suppose now, at the time when Cotys was thought to be so attached to you, any one had moved, that whoever killed Cotys must be given up for punishment, would you have given up Python and his brother, or would you in spite of that decree have made them citizens and rewarded them as benefactors? Again—take the case of Alexander of Thessaly. When he kept Pelopidas in prison and bonds, and was the bitterest enemy of the Thebans, and on such

epistolam scripsisse ad Senatum Populumque Atheniensium; postea, potitum rerum, ne dignatum quidem esse literis Athenienses, sed eorum ducem illis in locis certiorem fecisse quid facto opus esset. Vides quæ vis sit verborum πέμψεις Τιμομάχῳ."—*Schaefer.*

friendly terms with you as to ask for an Athenian general, and you sent assistance to him, and Alexander was everything, by Jupiter! if any one had proposed, that whoever killed Alexander should be liable to arrest, would it have been safe for any one to attempt to punish him for the affronts and insults which he afterwards heaped upon us? And why need one mention other cases? Look at Philip, who is now considered to be our greatest enemy. If, when he released some of our countrymen whom he had taken prisoners in the attempt to restore Argæus, and returned to them all that they had lost, and sent a letter declaring that he was ready to make alliance and to renew his hereditary friendship with us, if at that time he had asked to obtain such an honour, and any of the persons released by him had proposed, that whoever killed Philip should be liable to arrest, a pretty mockery of us it would have been! Surely you see and understand, O Athenians, what folly you would have been chargeable with in each of these cases, had you happened to have passed any such decree. No men in their senses, I take it, will either so trust a person whom they consider their friend, as to deprive themselves of defence against his attacks, or so hate one whom they deem an enemy, that, if he changes and wishes to be their friend, they prevent the possibility of his doing so. They should carry both their friendship and their hatred, I take it, so far only as not to exceed moderation in either.[1]

[1] I have more than once had occasion to notice coincidences of thought and argument in Demosthenes and Sophocles; nor is it at all unlikely that the orator borrowed from the poet, whom he had deeply studied and admired. On the mutability of friendships and alliances and the obligation thereby cast upon men to exercise precaution and forbearance, how has the poet expressed himself?

Ajax, 679:

ὅ τ' ἐχθρὸς ἡμῖν ἐς τοσύνδ' ἐχθαρτέος,
ὡς καὶ φιλήσων αὖθις· ἔς τε τὸν φίλον
τοσαῦθ ὑπουργῶν ὠφελεῖν βουλήσομαι,
ὡς αἰὲν οὐ μενοῦντα· τοῖς πολλοῖσι γὰρ
βροτῶν ἄπιστός ἐσθ' ἑταιρίας λιμήν.

Ibid. 1359:

ἦ κάρτα πολλοὶ νῦν φίλοι καὖθις πικροί.

Œdipus Coloneus, 610:

τὰ δ' ἄλλα συγχεῖ πάνθ' ὁ παγκρατὴς χρόνος.
φθίνει μὲν ἰσχὺς γῆς, φθίνει δὲ σώματος·

Nor again am I able to see, that all men will not demand this honour, who have any pretensions to call themselves your benefactors, if you grant it to Charidemus: for example,

θνήσκει δὲ πίστις, βλαστάνει δ' ἀπιστία.
καὶ πνεῦμα ταὐτὸν οὔποτ' οὔτ' ἐν ἀνδράσι
φίλοις βέβηκεν, οὔτε πρὸς πόλιν πόλει.
τοῖς μὲν γὰρ ἤδη, τοῖς δ' ἐν ὑστέρῳ χρόνῳ
τὰ τερπνὰ πικρὰ γίγνεται καὖθις πικρά.

Compare Shakspeare, Coriolanus, Act IV. Scene 4:

O world, thy slippery turns! Friends now fast sworn,
Whose double bosoms seem to wear one heart,
Whose hours, whose bed, whose meal, and exercise,
Are still together, who twin, as 'twere, in love
Unseparable, shall within this hour,
On a dissension of a doit, break out
To bitterest enmity; so fellest foes,
Whose passions and whose plots have broke their sleep
To take the one the other, by some chance
Some trick not worth an egg, shall grow dear friends
And interjoin their issues.

The moral is better in Livy, xl. 46:

"Non modo simultates, sed bella quoque finiuntur: ex infestis hostibus plerumque socii fideles, interdum etiam cives fiunt. Vulgatum illud, quia verum erat, in proverbium venit: amicitias immortales, inimicitias mortales debere esse."

The orator's advice, not to place unlimited confidence in Charidemus, reminds one of the prophetic warning given by Brutus to Cicero, touching the danger to be apprehended from the young Cæsar, at a time when he was thought to be a friend and benefactor of the republic. (Bruti Epist. ad Cicer. 4:)

"Quâ in re, Cicero, vir optime ac fortissime mihique merito et meo nomine et reipublicæ carissime, nimis credere videris spei tuæ: statimque, ut quisque aliquid recte fecerit, omnia dare ac permittere: quasi non liceat traduci ad mala consilia corruptum largitionibus animum.

Prudentia porro, quæ tibi superest, nulla abs te desideratur, nisi modus in tribuendis honoribus. Alia omnia sic abunde adsunt, ut cum quolibet antiquorum comparari possint tuæ virtutes, unum hoc, grato animo liberalique profectum, cautiorem ac moderatiorem liberalitatem desiderat. Nihil enim senatus cuiquam dare debet, quod male cogitantibus exemplo aut præsidio sit. Itaque timeo de consulatu, ne Cæsar tuus altius se adscendisse putet decretis tuis quam inde, si consul factus sit, descensurum. Quod si Antonius ab alio relictum regni instrumentum occasionem regnandi habuit; quonam animo fore putas, si quis auctore, non tyranno interfecto, sed ipso senatu, putet se imperia quælibet concupiscere posse? Quare tum et felicitatem et providentiam laudabo tuam, cum exploratum habere cœpero Cæsarem honoribus quos acceperit extraordinariis fore contentum."

With which compare Cicero, Philipp. xiii. 20; xiv. 10; Epist. ad Brut. 3, 10, 16, 18.

if you please, Simon, Bianor, Athenodorus, hundreds of others. Should we then pass the same vote in favour of all, we shall unthinkingly, as it seems, be acting the part of mercenaries, making ourselves a body-guard to each of these men ; should we pass it in favour of Charidemus, and not of the rest, the rejected will have a right to complain. Suppose now that Menestratus the Eretrian should ask us to vote him the same honour, or Phayllus the Phocian, or any other potentate, (there are many, you know, with whom circumstances often lead us to contract friendship ;) shall we vote it to all, or shall we not? We shall vote it very possibly. And what honourable excuse shall we have, O Athenians, when, pretending to be leaders of the Greeks in the cause of freedom, we appear as the body-guards of men who have raised themselves to be autocrats over the people? I can see none. If such a vote should be accorded to any person, (which I deny,) it should be given, first, to one who has never done any wrong, secondly, to one who will not be able to do wrong if he desires, and further, (honestly speaking,) to one who evidently to all men seeks it as a protection against injury, not as a means to injure others with impunity.

That Charidemus is not a person faultless in his conduct towards you, and not one who seeks to get your vote as a protection against injury, I shall not stop to prove: but that he is not to be trusted even for the future, I will show with your permission ; and see if you think I discuss the question fairly.

I consider, O Athenians, that all persons who desire to become citizens out of love for our customs and our laws, on being admitted to these, would at the same time settle among us and partake the benefits which they coveted Those who have no love or admiration for your institutions but regard only the advantage which they get by appearing to be honoured by you, they, I expect, or rather I am quite certain, whenever they spy a hope of greater advantage elsewhere, will run after that without troubling themselves in the least about you. For example—that you may see to what I allude—this Python, when he had just killed Cotys, and did not think it safe to go to every place, came to you and requested you to make him a citizen, and preferred you

to all the world: but now that he thinks Philip's connexion suits him better, he cares not an atom for you but attaches himself to him. For with those who live for ambitious objects there is nothing, men of Athens, there is nothing stable or honest: you must get the better of them, if you are wise, by taking precaution, not trust them first and accuse them afterwards. Could we assume therefore, O Athenians, contrary to the fact, that Charidemus himself has been and is and will be true to our interests, and will never alter his views, you ought not to vote him these privileges any the more. If indeed he were getting the protection of the decree for any other purpose than to aid Cersobleptes, it would not have been so bad: but I find upon calculation, that the person for whom he will use the advantage given by the decree is not worthy to be trusted either by us or by him. Mark how just are my reasonings upon every point, and how well grounded my apprehensions.

I look at Cotys; I see that he was connected by marriage with Iphicrates in the same way that Cersobleptes is with Charidemus, and that the services rendered by Iphicrates to Cotys were much more important and meritorious than those rendered by Charidemus to Cersobleptes. Let us look at the matter thus—Of course, O Athenians, you are aware that, although Iphicrates had a brazen statue here and maintenance in the city-hall and other honours and rewards, which made his lot a happy one, he dared to fight in defence of Cotys against your commanders at sea, and set a higher value on that monarch's safety than on the honours which he himself enjoyed among you: and, had not your resentment been more moderate than his indiscretion, nothing could have prevented his being the most wretched of men. And yet Cotys, after having been saved by him and received real proof of his attachment, when he thought himself completely secure, never studied to requite him, never employed him to do you any kindness that he might obtain forgiveness for the past, but on the contrary, required his assistance in besieging the rest of your fortresses, and upon his refusal, taking with him his own barbaric force together with that which Iphicrates had collected, and hiring also the services of this Charidemus, attacked your fortresses, and reduced Iphicrates to such straits, that he went and lived at Antissa and afterwards at

Drys, considering that he could not with any decency come to you, of whom he had made less account than of a Thracian and a barbarian, and that it was not safe to remain with Cotys, who he saw was so indifferent to his welfare.[1]

Just so, men of Athens, should Cersobleptes, exalted through the indemnity which they are now procuring for Charidemus, be indifferent to his interest, and form plots and designs against you, are you content, provided Charidemus be tricked, to have armed the Thracian with power against yourselves? I can hardly think so. The proper course I take to be this. If Charidemus feels and foresees the danger, and still exerts himself to obtain such a decree, you ought to oppose him as an insidious enemy; if it has escaped his notice, the more we believe in his good intentions, the more should we provide both for our own security and for his. For it is the duty of true friends not to oblige their well-wishers by doing what will be hurtful both to them and to themselves, but to help them in what is likely to be for their common advantage; and where a man sees farther than his friend, he should manage things for the best, and not treat the gratification of the moment as of higher importance than all future time.

Nor upon reflexion am I able to see, that, perfidious and barbarous as Cersobleptes is, he would still be cautious not to wrong Charidemus so grievously. For when again I consider, of what advantages Cotys had no scruple to despoil Iphicrates, I think this man would not have the slightest care for what Charidemus would lose. Cotys expected to deprive Iphicrates of honours, maintenance, statues, a country which made him enviable, everything (I may almost say) which rendered life worth having; and yet he had no remorse: but really of what should this man be anxious not to deprive Charidemus? He possesses nothing whatever at Athens, neither children, nor statue, nor relations, nor anything else. If Cersobleptes however is not trustworthy by nature, if his past conduct makes it dangerous to trust him, and if there is nothing in the circumstances which should induce him against his nature and against all expectation to protect

[1] As to the connexion of Iphicrates with Cotys, his residence in Thrace, &c., see Vol. I. Appendix III. p. 267; Grote's History of Greece, x. 144.

the interests of Charidemus, why should we, like pure and downright simpletons, assist him in the accomplishment of his objects, especially when they are injurious to us? I cannot understand.

But besides that the decree is impolitic, I must inform you that it is not for the honour of Athens, that she should be known to have decreed such a thing. If the decree, O Athenians, had been for the benefit of a man residing in a city and living under constitutional government, bad as it is, it would have been less disgraceful: but it has been drawn in favour of Charidemus, who resides in no city at all, but is the general of a Thracian and a prince, whose royal authority he uses to commit acts of injustice. Of course you know, that all these mercenary leaders seize upon Greek cities and endeavour to establish their own dominion: if the truth is to be spoken, they go about everywhere the common enemies of all who wish to live as freemen under the laws of their country. Is it becoming then or honourable in you, O Athenians, to have passed this vote before all the world, giving protection to a man who will plot against the first people he meets for his own selfish purposes, and to have proclaimed that those who defend their own liberties shall be excluded from your alliance? I do not conceive that it is either honourable or worthy of you. Can it be otherwise than disgraceful, when you reproach the Lacedæmonians for making those terms which put the Asiatic Greeks under the power of the king, that you should yourselves surrender to Cersobleptes the Europeans and all whom Charidemus thinks he can master? For this decree does nothing less, when it is not defined what his general may do or may not do, but all who defend themselves are threatened with such fearful consequences.

Again, O Athenians, I would remind you of an actual occurrence, by which you will still more clearly see how absolutely necessary it is to rescind this decree. On a certain occasion once you made Ariobarzanes a citizen, and Philiscus[1]

[1] Philiscus was a native of Abydus, who became one of the chief officers of Ariobarzanes, satrap of Phrygia, and was employed by him in important commands on the coast of the Hellespont. He was sent in the year B. C. 368 on a mission to Greece, to mediate for a peace between the contending states. A congress was held for that purpose

also on his account, just as now you have made Charidemus on account of Cersobleptes. Philiscus, resembling this man in his principles of action, got possession of Greek cities by the power of Ariobarzanes, took up his quarters in them and committed divers atrocities, outraging free women and children, and doing all that a man brought up in ignorance of laws and civil government would do, if armed with authority.[1] Well : in Lampsacus there are found two men ; (one was named Thersagoras, and the other Execestus ;) who, holding the same sentiments as our own people about tyrants, kill Philiscus, as they were right to do, under a sense of their obligation to free their country. Suppose any of the orators, who supported Philiscus at the time when he was giving pay to the mercenaries in Perinthus, when he was master of all the Hellespont and the most powerful of the lieutenants, had proposed as Aristocrates has now, that whoever killed Philiscus might lawfully be apprehended in the territory of our allies ; see, by heavens, into what disgrace our commonwealth would have fallen ! Thersagoras and Execestus came to Lesbos and resided there : had any of the

at Delphi, but failed in its purpose, the Spartans insisting upon the restoration of Messenia, which the Thebans would not consent to. Philiscus, having brought with him a large sum of money, collected a body of mercenaries to assist the Spartans. It may have been about this time that he and his master were created citizens of Athens. A few years afterwards Ariobarzanes, meditating revolt from the king of Persia, solicited aid from the Athenians, and Timotheus was sent to the Hellespont, but with limited powers, under that decree which is mentioned in the Oration on the Liberty of the Rhodians. (Vol. I. p. 193.) The satrap then rendered important services to Athens, by helping Timotheus to take Sestus and Crithote. (See Xenophon, Hellen. vii. c. 1. s. 27 ; Diodorus, xv. 70 ; Cornelius Nepos, Vit. Timoth.)

[1] The incapacity of men brought up like Charidemus and Philiscus for living under the laws of a free state caused the Romans, after their conquest of Macedonia, to take the harsh measure related by Livy, xlv. 32 :

"Nomina deinde sunt recitata principum Macedonum, quos cum liberis majoribus quam quindecim annos natis præcedere in Italiam placeret. Id primâ specie sævum, mox apparuit multitudini Macedonum pro libertate suâ esse factum : nominati sunt enim regis amici purpuratique, duces exercituum, præfecti navium aut præsidiorum ; servire regi humiliter, aliis superbe imperare assueti : prædivites alii, alii, quos fortunâ non æquarent, his sumptibus pares : regius omnibus victus vestitusque : nulli civilis animus, neque legum neque libertatis æquæ patiens."

friends or children of Philiscus laid hands upon either of them, he must have been given up by virtue of your decree. Would not your conduct have been shameful and dreadful, O Athenians, if, while you set up in brass and reward with the highest honours those who have performed such a feat at Athens, you had proscribed as outlaws men of other countries who showed the same devotion to their fatherland? Happily in the case of Philiscus you were not thus imposed upon, and did not incur the shame: in this case, if you take my advice, you will guard against it. For when nothing is defined, but the clause is simply "if any one shall kill Charidemus," very possibly something of this kind might occur.

I would now briefly examine the conduct of Charidemus, and expose the outrageous impudence of his panegyrists. One thing I promise you—and let no man be offended at the promise—I will show not merely that he is unworthy of the protection which Aristocrates has given him, but that he deserves the severest chastisement, if men do deserve to be punished who have evil intentions, who impose upon you, who invariably take part against you. Some of you perhaps, considering that the man has been made a citizen and afterwards honoured with golden crowns as a benefactor, wonder how such gross deception could have been practised upon you so easily. Be assured, men of Athens, it has been practised: how you have not unnaturally fallen into the error, I will explain to you. The reason is that, while you, men of Athens, judge rightly of many things, you do not use your judgment consistently. For instance, what do I mean? If you were asked, which of all classes in the state you regard as the vilest, you would not say the agriculturists, nor the merchants, nor the mining people, nor any of that kind; but if any one said, the persons who are accustomed to make speeches and motions for hire, I am sure it would meet with your assent. Up to this point therefore you judge well; not so rightly in what follows: for on those, whom you think the most worthless of men, you depend for a correct estimate of every one's character; and they tell you that a man is good or bad, whom it suits their purpose to call such, not whom it is right and proper: which is exactly what the orators have done all along with this Charidemus,

as you will agree with me, when you have heard my account of his actions.

The campaigns which he has served against Athens originally as a slinger and light-armed soldier I do not set down as an offence, nor the fact that he once kept a pirate vessel and plundered your allies. I pass by all this. Why? Because, men of Athens, the pressure of necessity destroys all calculations about right and wrong, so that a man who judges fairly must not take a nice account of such things.[1] But let me explain how he began to do you injury when he was a mercenary leader and at the head of some troops. First of all, he was hired by Iphicrates, and served under him for more than three years. When you deposed Iphicrates from his command, and sent out Timotheus to conduct the war against Amphipolis and Chersonesus, those Amphipolitan hostages whom Iphicrates had received from Harpalus and entrusted to his charge, although you passed a resolution requiring him to bring them to Athens, he delivered up to the Amphipolitans; and that prevented your taking Amphipolis. When Timotheus offered again to hire him and his troops, he declines the engagement with him, but sailed away with your pinnaces to Cotys, whom he knew for certain to be your greatest enemy. Afterwards, when Timotheus resolved to commence the war against Amphipolis before that against Chersonesus, and he had no opportunity of doing you any mischief there, he hires himself again to the Olynthians your enemies, and to those who held Amphipolis at that time.[2] On his passage thither, having set sail from Cardia to fight against us, he was taken by our galleys: but on account of the emergency and our wanting soldiers for the war against Amphipolis, instead of his being punished for not having given up the hostages and for deserting and carrying the vessels to Cotys your enemy he exchanged pledges and

[1] So Shakspeare, in Measure for Measure, Act II. Scene 4:

> Our compelled sins
> Stand more for number than accompt.

[2] The words καὶ τοῖς ἔχουσιν Ἀμφίπολιν seem to import, that there were other parties, not the Olynthians, who were then in possession of Amphipolis. Yet this is not absolutely certain. Pabst in his translation refers the last clause to the Olynthians; but whether he read it without the καί, I cannot tell.

See Thirlwall's History of Greece, v. 185.

served on your side. And for the very thing which he should have been grateful to you for, not having been put to death as he deserved, the commonwealth, as if she were under an obligation, has given him crowns and citizenship and what you all know.

To prove my statements, read me the decree concerning the hostages, and the letter of Iphicrates, and that of Timotheus, and afterwards this deposition. You will see, there is more than words and accusation, there is truth in what I say. Read the letter.

[*The decree: the letters: the deposition.*]

That he first engaged to serve in a country where he expected to fight against you, though he might have accepted engagements in many other places; that afterwards, when he could do you no mischief there, he started again for a place where he was to act against Athens; and that he is the principal cause of our not taking Amphipolis; you have heard from the letter and the decree and the deposition. Such are the first acts of Charidemus. Now look at others.

After the lapse of some time, when the war had commenced with Cotys, he sends a letter to you, or rather not to you but to Cephisodotus; (so persuaded was he from a consciousness of what he had done, that he himself could not even deceive the commonwealth,) in which he promised to recover Chersonesus for the commonwealth, although he had determined to do just the reverse. You must hear the particulars of the letter, (they are not long,) and mark the style in which the man has treated you from the beginning. When he quitted the service of Timotheus at the time I mention, retiring from Amphipolis, he crossed over to Asia, and, as Artabazus had then been arrested by Autophradates, he hires himself and his troops to the sons-in-law of Artabazus. Though he had given and taken pledges, he scrupled not to violate his oath, and the people of the country being off their guard, supposing him to be a friend, he seizes upon three of their towns, Scepsis, Cebren, and Ilium. Having got possession of those places, he suffered a misfortune which, I will not say a man pretending to be a general, but any ordinary person would have known better than to do. For though he had not a single place upon the coast, or from which it was

possible to get provisions for his troops, and he had no provision in those places, he stayed within their walls, instead of pillaging them and making off when once he had resolved upon foul play.[1] Artabazus however, having been released by Autophradates, collected forces and advanced: he had supplies at hand from upper Phrygia and Lydia and Paphlagonia, which were friendly to him, while for Charidemus there was nothing left but a blockade. Perceiving what a scrape he was in, and reckoning that he would be taken prisoner by famine at least, if by nothing else, he saw either by the help of some monitor or of his own reflexion, that his only chance of safety was that which saves all people. What is that? Your—shall I call it humanity, O Athenians, or any other name? Having come to this opinion, he sends you the letter which it is worth your while to hear, hoping that by means of his promise to recover Chersonesus for you, and by Cephisodotus appearing to wish this out of enmity to Iphicrates and Cotys, he might obtain ships from you and make his escape out of Asia. But in the very playing of the trick there occurred something which exposed it palpably. What was this? Memnon and Mentor, the sons-in-law of Artabazus, who were young men and had got an unexpected piece of good fortune in the connexion of Artabazus, wishing to govern the country in peace immediately, and to enjoy their honours without war and danger, persuade Artabazus to abandon his design of punishing Charidemus and to send him off under a convention, representing that you would bring Charidemus across whether he liked or no, and he would not be able to prevent it. Charidemus, obtaining this extraordinary and unlooked-for deliverance, crossed over to the Chersonese by himself through the convention; but,

[1] Auger expresses it neatly enough: "comme il auroit dû ayant résolu de mal faire." Ἔγνω ἀδικεῖν is used as ἐγνωκὼς ποιεῖν just above. It is capable indeed of bearing the sense which Pabst gives it: "he knew that he had done wrong." My way of taking it is favoured by the position of the words, ἀδικεῖν coming before ἔγνω, and best suits the reasoning of the orator. To plunder and be off was the most prudent course for Charidemus, *the moment* he determined to act treacherously.

Pabst translates with some degree of circumlocution: *ohne nach deren Eroberung weiter umher zu ziehen, um von da aus Lebensmittel durch Plünderung aufzutreiben, da er doch einmal sich einer unrechtlichen Handlungsweise bewusst war.*

so far from attacking Cotys, though he had written to say that Cotys would not resist his attack, or from helping you to recover the Chersonese, he again hired himself to Cotys and laid siege to your remaining fortresses, Crithote and Elæus.

That, even while he was yet in Asia and was writing the letter to you, he had resolved upon this course and played you false, you will see by the circumstances of his passage: for he started from Abydus, which has all along been your enemy, and from which the capturers of Sestus made their expedition, and he crossed over to Sestus, which was held by Cotys. Don't suppose that either the Abydenes or the Sestians would receive him after that letter had been sent to you, if they had not been privy to his deceit, and had not themselves joined in the fraud, desiring that you should provide security for the passage of the troops, but that, after they passed, (which they did with the permission of Artabazus,) the advantage should be their own.

To prove these statements, read the letters, that which he sent, and those from the governors in Chersonesus. You will see by them, that it is as I say. Read:

[*Letters.*]

Observe from what place he crossed, and to what place: from Abydus to Sestus. Think ye the Abydenes or the Sestians would have received him, had they not been parties to the deception when he sent the letter to you?

Read them the letter itself. And mark, O Athenians, the extravagant terms in which he has praised himself to you, both in recounting what he has done, and in promising what he will do. Read.

[*The Letter.*]

Fine words, are they not, O Athenians? and deserving of your best thanks, if they were true. But no. When he did not expect to obtain the convention, he wrote this to deceive: when he obtained it, how did he act? Read.

[*The Letter.*]

Just so: since the passage of Charidemus who promised to recover our lost places, the governor of Crithote says that our possessions have been in greater danger than before. Read from another letter: show it me first.

[*The Letter.*]

Read from another.

[*The Letter.*]

You see; it is testified on all hands, that, after he crossed the straits, he marched not against Cotys, but with him against us. Read me this one more letter, and put the others by. It is evident to you now, I think, how he has tricked you.

[*The Letter.*]

Stop. Observe that, after having written that he would restore the Chersonese, he hired himself to your enemies and attempted to deprive you of what was left: after writing that Alexander had sent envoys to him and he refused to admit them, he is shown to be cooperating with pirates in his commission. A pure well-wisher of yours, is he not? and a man who would never write an untruth or deceive!

Plain as it is from this evidence, that no faith can be put in his professions and affectation of friendship for Athens, it is not yet so plain but what the subsequent events will make it clearer still. Cotys fortunately (being your enemy and a bad man) is killed by Python: Cersobleptes, the present king, was a stripling, as were all the sons of Cotys, and Charidemus, by being on the spot and having a force, was master of everything: Cephisodotus had arrived with command, (the person to whom he himself had sent that letter,) and the galleys which, while his escape was yet doubtful, and in the event of Artabazus opposing, were to save him. What now, O Athenians, should a man truly sincere and friendly have done, when a general was on the spot, not one of those having (as he might have said) an ill-feeling towards him, but one whom he had chosen out of all your generals to be his own friend, and to whom he had sent the letter, and when Cotys was dead, and he had all the power in his hands? Should he not have restored the territory to you immediately, and joined with you in establishing the king of Thrace upon his throne, and given proof of his attachment to you, when he had got such an opportunity? I should say so. Was anything of the kind done by him? Very far from it. He continued to make war upon you for altogether seven months, acting openly as an

enemy and not allowing even a civil word. And when we anchored at first with only ten ships in the harbour of Perinthus, having heard that he was in the neighbourhood, in order that we might be in communication with him and confer upon matters, he watched the time when our men were at dinner, and made an attempt to capture our vessels; many of the seamen he killed, and drove the whole body into the sea, having with him some cavalry and light troops. Afterwards, when we sailed, not to attack any fort or district in Thrace—for this cannot be said—"True, he did some damage, but it was in self-defence"—Nothing of the kind: we went to no part of Thrace, but against Alopeconnesus, which is in the Chersonese and belonged to you; it is a promontory jutting out towards Imbrus at a great distance from Thrace, and was full of pirates and corsairs. When we had come there, I say, and were besieging those people, he marched right through the Chersonese, your territory, made an attack upon us, and assisted the pirates. And sitting down before the place, he persuaded and forced your commander into measures adverse to your interests, instead of being himself persuaded by him to do aught that he had undertaken and promised; and so he draws up that convention with Cephisodotus, at which you were so angry and indignant, that you deposed the commander and fined him five talents, three votes only saving him from a capital sentence. But what an absurdity must it be thought, O Athenians, when for the same actions we see one man so severely punished as a culprit, and another even to this moment honoured as a benefactor?

For proof of these statements—as to what happened to the general, I apprehend that you are my witnesses; for you tried and deposed and manifested your wrath against him, and you are acquainted with all the circumstances: as to what occurred at Perinthus and Alopeconnesus, call me the captains for witnesses.

[*Evidence of the Captains.*]

After this, when Cephisodotus was removed from the command, and you considered the terms made with him to be dishonourable and unjust, this worthy Charidemus gets Miltocythes, who was throughout friendly to you, treache-

rously delivered to him by Smicythion, and, as it is not the practice of the Thracians to put one another to death, knowing that he would be safe if he were carried to Cersobleptes, he hands him over to the Cardians your enemies. They, having got both him and his son into their hands, put out to sea in a boat, cut the throat of the son, and threw the father into the sea after he had witnessed his son's butchery. This act roused the indignation of the whole Thracian people; Berisades and Amadocus entered into a coalition; Athenodorus, seeing the opportunity, made an alliance with them and was in a condition to carry on war. Cersobleptes then being alarmed, Athenodorus draws up a treaty, by which he compels Cersobleptes to swear to an engagement with you and the princes, that the kingdom of Thrace should be divided among them in three shares, and that they should all restore to you your territory. At the election of officers you appointed Chabrias to the command in that war; but it so happened that Athenodorus disbanded his forces, having no money from you and no means to carry on the war, and Chabrias sailed out with only one ship: under these circumstances again what step does our Charidemus take? The treaty that he swore to with Athenodorus he disclaims, and persuades Cersobleptes to disclaim it; then draws up another with Chabrias, yet more shameful than that with Cephisodotus: Chabrias, having no force, was obliged, I suppose, to acquiesce. But when you heard of it, after many speeches had been made in the assembly and the treaty had been read, you, without respecting either the high character of Chabrias or any of his supporters, repudiated this new treaty also, and passed a decree on the motion of Glaucon, to elect from among yourselves ten ambassadors, with instructions, if Cersobleptes would abide by the treaty with Athenodorus, to swear him again, if not, to receive the oaths from the two princes, and consult upon the best plan for making war against him. Your ambassadors sailed from Athens; time slipped on, and things came to such a pass at length, that, while these men were delaying and refusing to do anything honest or straightforward, we sent succours to Eubœa, and Chares came home with the mercenaries, and was sent out by you as general plenipotentiary to the Chersonese. Then he draws up a new treaty with Chares, to which Athenodorus

and the princes were parties, and which is the best and justest of all. And thus he has given actual proof against himself, and shown that he watches for opportunities with us,[1] and is resolved to do nothing straightforward or equitable. A man who, as you see, requires inducement to be your friend,[2] who is well disposed to you in proportion as he considers you to be strong, should he, do you think, be suffered ever to grow powerful, and that too by your assistance? If you think so, you are wrong.

To convince you of the truth of my statements—please to take the letter which came after the first treaty; then that from Berisades. You will judge best by this information.

[*The Letter.*]

Read also the letter from Berisades.

[*The Letter.*]

The alliance of the two princes was contracted in this way,

[1] Καιροφυλακεῖ τὴν πόλιν. Reiske: "Observat reipublicæ tempora, seu prospera, seu adversa, iisque servit et in rem suam utitur." Pabst: *er unserm Staat die günstigen Gelegenheiten ablauert.* Compare Olynthiac iii. 30. ἐφορμεῖν τοῖς ἑαυτοῦ καιροῖς. I am inclined to Reiske's interpretation here. Charidemus was a time-server and a time-waiter, who was with or against Athens, according to the occasion which presented itself. Such a *waiting upon opportunity* is described by Shakspeare, in the Second Part of Henry IV. Act II. Scene 3:

LADY PERCY.

If they get ground and vantage of the king,
Then join you with them, like a rib of steel,
To make strength stronger; but, for all our loves,
First let them try themselves. . . . . .

NORTHUMBERLAND.

'Tis with my mind
As with the tide swelled up unto its height,
That makes a still-stand, running neither way.
Fain would I go to meet the archbishop,
But many thousand reasons hold me back.
I will resolve for Scotland: there am I,
Till time and vantage crave my company.

[2] Ἐκ προσαγωγῆς φίλον. Only your friend when he is brought over—by some temptation or by force—as for example, when Timotheus made him prisoner and compelled him to serve against Amphipolis. (Ante, p. 213.) Pabst: *der nur, je nachdem er durch die jedesmaligen Zeitumstände bestimmt wird, gegen Euch als Freund sicht zeigt.* Auger: "que vous voyez n'être votre ami que selon les conjonctures."

after you had been cheated by the treaty with Cephisodotus, Miltocythes having been then destroyed, and Charidemus shown by his acts to be an enemy of the commonwealth. For when he got into his power a man whom of all the Thracians he knew to have been your staunchest friend, and yet thought proper to hand him over to your enemies, did he not exhibit a proof of great hostility to you? Now read the treaty which Cersobleptes made afterwards, in fear of war with the Thracians and Athenodorus.

[*The Treaty.*]

After drawing up and agreeing to these terms and swearing the oath which you have heard, when he saw the forces of Athenodorus disbanded, and that Chabrias had arrived with one galley, he neither gave up to you the son of Iphiades nor did anything else that he had sworn to do, but renounces the other articles likewise, and draws this treaty. Please to take and read this.

[*The Treaty.*]

Remember that he thought proper to take both duties and tithes, and talked again as if the territory was his own, requiring that his own tithe-collectors should have the disposal of the duties; and the son of Iphiades, the hostage that he held for Sestus and swore to Athenodorus that he would deliver up, he does not even promise to deliver up now. Take the decree which the Athenians passed in consequence. Read.

[*The Decree.*]

When the ambassadors afterwards came to Thrace, Cersobleptes sends you this letter, and would agree to nothing that was just. The others wrote this. Read to them.

[*The Letter.*]

Now read that from the princes, and see if you think they make no complaint.

[*The Letter.*]

You see, men of Athens, you perceive his baseness and treachery, how it sways up and down. First he wronged Cephisodotus, then he desisted for fear of Athenodorus; again he wronged Chabrias, and afterwards agreed with Chares

He has turned everything upside down, and done nothing in an honest or straightforward way.

Since that, as long as your force was in the Hellespont, he has continued to flatter and amuse you: but no sooner did he find the Hellespont freed from the presence of a force, than he set himself to destroy and dethrone the two princes and get the whole kingdom into his own power, knowing by experience that, until he expels them, it is not possible for him to break any part of his compact with you. To accomplish this in the easiest way, he obtained a decree from you, by which, if confirmed, (but for us and our indictment,) the two princes would have suffered open wrong, their generals, Bianor, Simon, Athenodorus, would have kept quiet for fear of vexatious proceedings under the decree, and the person who profited by the opportunity and got the whole kingdom into his hands would have been established as your powerful enemy.

He has taken care all along to have as the base of his operations the city of Cardia, which in all his treaties he has reserved to himself, and of which at last he openly deprived you. But why should men void of any dishonest intentions towards us, and in all truth and sincerity resolved to be our friends, have left themselves a base for warlike operations against us? Of course you know, (those who have been there for certain, and others by their information,) that, Cardia being situated as it is,[1] should Cersobleptes make all right for himself with the Thracians,[2] he can any day march safely against the Chersonese. For the city of Cardia has the same position in Chersonesus with regard to Thrace, which Chalcis has in Eubœa with regard to Bœotia; and any of you that knows its position is aware also, for what opportunity he has kept it to himself and laboured to exclude you from the possession. You must not help him to such a chance against yourselves, but throw every difficulty in the way, and aim at preventing it: for, that he will let no opportunity pass by,

[1] Τῆς Καρδιανῶν πόλεως ἐχούσης ὡς ἔχε.. Pabst adopts Wolf's interpretation of these words: *so lange die Stadt Cardia gegen uns so gesinnt bleibt, wie es jetzt ist.* Had the orator meant this, he would probably have added ἡμῖν or πρὸς ἡμᾶς.

[2] Εἰ γενήσεται τὰ πρὸς τοὺς Θρᾷκας εὐτρεπῆ τῷ Κερσοβλέπτῃ. Pabst: *sobald er die Angelegenheiten von Thracien in Ordnung gebracht haben wird.*

he has given proof. When Philip, for example, came to Maronea, he sent Apollonides to him, giving pledges to him and Pammenes : and had not Amadocus, who was master of the country, forbidden Philip to enter it, there would have been nothing to prevent your being now at war with the Cardians and Cersobleptes. To prove my statements, take the letter of Chares.

[*The Letter.*]

Looking at these things, you should act warily, not be fools and respect him as a benefactor. You owe no gratitude to Cersobleptes for the compulsion under which he deceitfully pretends to be your friend, nor for the trifling sums which Charidemus disburses privately among your generals and orators, in order to obtain votes of honour from you : it becomes you much rather to resent the attempts to injure you, which he is shown to have made on every occasion when he has had free liberty of action. All other men, who have ever obtained a grant from you, have been honoured for services rendered : this is the only one of all, who has been honoured for abortive attempts to injure you. For such a man surely it was a great mark of your kindness, to be released from the punishment which he merited. That is however not the opinion of your orators : he must receive the titles of citizen and benefactor, crowns and honours, for the presents which he gives them in private. The rest of you sit like dupes, wondering what it all means. And to finish it up, they would have constituted you his protectors by virtue of this resolution of Council, but for this indictment of ours ; and the commonwealth would have performed the part of his hireling and retainer, and guarded the person of Charidemus. A fine thing truly ! O Jupiter and the Gods !—that one who was himself once a body-guardsman in the pay of your enemies, should be publicly protected by your decree !

Perhaps I may be asked, how it happens that having such an accurate knowledge of these things, having closely traced some of his delinquencies, I let him alone, and never made any opposition either when you created him citizen or when you gave him a vote of honour, nor, in short, took any notice of him until after the passing of this decree. I, men of Athens, will tell you the whole truth. I knew his un-

worthiness, and was present when these dignities were conferred upon him, and offered no opposition; I confess. And why? Because, men of Athens, I thought in the first place, that a multitude of persons, telling lies about him to you without scruple, would be too strong for me singly speaking the truth: and in the next place, I declare most solemnly, I had no idea of envying him what he was seeking to cheat you out of, and I did not see that any tremendous evil would befal you, if you forgave a man all his offences and invited him to render you service in future; for in your crowning and making a citizen of him both these things were involved. But now that I see him contriving a new scheme, by which, if he can only instruct people here to deceive you in his behalf, your friends abroad, who would be glad to serve you and prevent his attacking you, for example, Athenodorus, Simon, Bianor, Archebius of Byzantium, the two Thracian princes, will none of them be at liberty either to check or to oppose him, I am here as his accuser. And I consider, although to contest a grant, by which he was not likely to injure the state vastly, would be like a man having a private grievance or a vexatious object, to oppose him in a scheme for doing the state a serious mischief is the act of an honest man and a patriot. Therefore, although on the former occasion I said nothing, I speak now.

They have an argument however, by which they expect to mislead you; that Cersobleptes and Charidemus acted against the commonwealth perhaps, while they were enemies, but now they are friends and make themselves useful: we must not bear malice therefore; as, when we helped the Lacedæmonians, we did not remember any injury which they did us whilst they were enemies, nor when we helped the Thebans, and the Eubœans very lately. I conceive that this argument would be in point, if they urged it on the occasion of some critical motion, resisted by us, for succouring Cersobleptes and Charidemus: but if there is nothing of the kind pending, if there is no such motion, and the purpose of their argument is to make his generals unduly powerful by getting impunity from you, I consider they are acting shamefully. For it is not right, O Athenians, that the arguments of men craving deliverance should be addressed to you in favour of men seeking permission to do wrong. And inde-

pendently of this—if Charidemus did mischief while he was an enemy, and had changed after professing to be a friend, perhaps one might have listened to the plea; but since it is not so, since he has deceived you most from the time that he has pretended friendship, if you ought not to hate him for his previous conduct, you ought surely to distrust him for this. Upon the subject of not being revengeful, I will tell you what I think. A man who revives his grievances with a view to doing injury, is revengeful: a man who looks them up in order to guard against injury, is wise.

Perhaps however they will take a point of this kind—that the man is now bent upon being our friend, and wishes to render some service to the commonwealth, and we shall discourage him, if we condemn the decree, and cause him to regard us with mistrust. Mark, O Athenians, what my sentiments are. If he were our true and sincere friend, and meant really to do us all the good in his power, even then I could not have admitted such an argument: for I conceive that, for no good that any man can do, ought you for his sake to commit perjury and vote contrary to your convictions. Since however he is proved to be guilty of deceit and dishonesty, one of two good results will follow from your condemning the decree. Either he will desist from his artifices, thinking that they are no longer undiscovered; or, if he wishes to be really connected with us, he will endeavour to render us some service, knowing that by trickery he can no longer accomplish his objects. So that for this reason at all events, if for no other, it is expedient to give a verdict against him.

It is worth your while also to inquire, O Athenians, how it was that our ancestors awarded recompenses and honours to real benefactors, whether they were citizens or strangers. And if you see that they awarded them better than you, it will be well to imitate them; if you find your own method the best, you can go on with it. In the first place, Themistocles who gained the naval fight at Salamis, and Miltiades who commanded at Marathon, and many others whose services are not on a level with those of modern generals, were not set up in brass by your ancestors, nor received from them any extraordinary homage. Were your ancestors then not grateful to their benefactors? Assuredly they were, O Athenians: and they showed their

gratitude in a manner worthy both of themselves and them: for, high as were the merits of all, they elected these to be their leaders; and to the wise, who will look at the truth of things, it is a far greater honour than a brazen statue, to be placed at the head of brave and honourable men. Verily,[1] O Athenians, your ancestors renounced not their share in any of those glories; and there is no one who will attribute the battle of Salamis to Themistocles, but to the Athenians, nor the battle of Marathon to Miltiades, but to the commonwealth. But now, O Athenians, people say that Timotheus took Corcyra, and Iphicrates cut in pieces the Spartan division, and Chabrias won the seafight at Naxos; for you seem yourselves to resign the merit of those exploits by the extravagance of the honours which you have given to each of these men on their account.

Thus honourably and advantageously for themselves did they bestow their political rewards; thus injudiciously do we. But how the rewards of strangers? Our forefathers, when Menon the Pharsalian had given ten talents in money for the war at Eion by Amphipolis, and succoured you with three hundred cavalry of his own retainers, did not pass a decree, that whoever killed him should be liable to arrest, but gave him citizenship, and held that honour to be sufficient. And again when Perdiccas, who reigned in Macedonia at the time of the barbarian invasion, destroyed the barbarians retreating from Platæa, and completed the disaster of the king, they did not pass a decree, that any one should be liable to arrest if he killed Perdiccas, by whom war had been declared against the king on our account; but they gave him citizenship only. For then indeed so valuable was Athenian citizenship esteemed by all men, that, in order to obtain it, they were willing to render such important services; while now it is so worthless, that many of your adopted citizens have done you more mischief than open enemies. And not only has this gift of the commonwealth become vile and contemptible, but all have become so through the wickedness of the detestable and accursed orators, who draw up these decrees without scruple; who have carried their dis-

[1] This is repeated with some variation in the Speech on the Duties of the State, pp. 172, 173. See this Translation and the notes in Vol. I.

graceful cupidity to such an excess, that, like men who put up wretched trumpery for auction, they sell your honours and rewards at the cheapest prices, drawing for a number of people on the same terms any decree they like to have.

First—that I may begin with the latest examples—they not only accorded to Ariobarzanes and his sons, three in number, everything which they desired, but associated with him two citizens of Abydus, deadly enemies of Athens and men of the worst character, Philiscus and Agavus. Again—when Timotheus was considered to have rendered you good service, besides conferring upon him all the highest distinctions, they associated with him Phrasierides and Polysthenes, who were not even freemen, but rascals who had done such things as decency forbids to mention. And on this last occasion, when they were for giving such honours as they thought fit to Cersobleptes, and were intent upon that object, they associate with him two persons, one of whom has done all the mischief that you have heard, and the other, a man named Euderces, no one knows anything about. It is from such causes, O Athenians, that what was great heretofore appears little now, and the thing is progressing even still further, and these distinctions are no longer sufficient, but, unless you guard the persons of each of these men, there is no thanks, it would seem, for what you have done before.[1]

That things have come to this disgraceful pass, if the truth must be spoken with freedom, is owing, men of Athens, principally to yourselves. For you like no longer even to bring offenders to justice, but the practice is gone out of the commonwealth. Yet look how your ancestors chastised those who offended them, and see whether they did it in your style. When they found Themistocles arrogating superiority over them, they banished him from the city, and condemned him for correspondence with the Mede.[2] And Cimon, because

[1] Thus Auger: "si vous ne vous constituez à la garde de chacun de ces gens-là, ils ne vous sauront apparemment aucun gré des faveurs qu'ils ont déjà obtenu." Pabst is wrong: *Wenn Ihr daher nicht jedem einzelnen Fall der Art Eure Wachsamkeit widmet, so wird Jenes endlich allen Werth verlieren.*

[2] "No Greek had yet rendered services such as those of Themistocles to the common country; no Athenian, except Solon, had conferred equal benefits on Athens. He had first delivered her from the most imminent danger, and then raised her to the preeminence on which

he stirred up of his own authority a revolution at Paros, they fined fifty talents, and were within three votes of condemning him to death.[1] So they dealt with men who had

she now stood. He might claim her greatness and even her being as his work. Themistocles was not unconscious of this merit, nor careful to suppress his sense of it. He was thought to indicate it too plainly when he dedicated a temple to Artemis under the title of Aristobule, the Goddess of good counsel; and the offence was aggravated, if he himself placed his statue there, where it was still seen in the days of Plutarch, who pronounces the form no less heroic than the soul of the man. In the same spirit are several stories, related by Plutarch, of the indiscretion with which he sometimes alluded to the magnitude of the debt which his countrymen owed him. If on one occasion he asked them: where they would have been without him? and on another compared himself to a spreading plane, under which they had taken shelter in the storm, but which they began to lop and rend when the sky grew clear: he would seem not to have discovered till it was too late, that there are obligations which neither princes nor nations can endure, and which are forfeited if they are not disclaimed. . . . .

"Themistocles was gradually supplanted in the public favour by men worthy indeed to be his rivals, but who owed their victory less to their own merit than to the towering preeminence of his deserts. He himself, as we have observed, seconded them by his indiscretion in their endeavours to persuade the people that he had risen too high above the common level to remain a harmless citizen in a free state: that his was a case which called for the extraordinary remedy prescribed by the laws against the power and greatness of an individual, which threatened to overlay the young democracy. He was condemned to temporary exile by the same process of ostracism which he had himself before directed against Aristides. He took up his abode at Argos, which he had served in his prosperity, and which welcomed, if not the saviour of Greece, at least the enemy of Sparta. Here he was still residing, though he occasionally visited other cities of Peloponnesus, when Pausanias was convicted of his treason. In searching for further traces of his plot, the ephors found some part of a correspondence between him and Themistocles, which appeared to afford sufficient ground for charging the Athenian with having shared his friend's crime. They immediately sent ambassadors to Athens to accuse him, and to insist that he should be punished in like manner with the partner of his guilt. . . . .

"His cause was never submitted to an impartial tribunal: his enemies were in possession of the public mind at Athens; and officers were sent with the Spartans, who tendered their assistance to arrest him and bring him to Athens, where in the prevailing disposition of the people almost inevitable death awaited him. This he foresaw, and determined to avoid."

Thirlwall's History of Greece, ii. pp. 380—384. As to the escape of Themistocles to Asia, his reception and death, see Thucydides, i. 136—138.

[1] Neither Bekker's reading Παρίων nor the common one πάτριον, is

conferred on them such mighty obligations. Justly! They would not barter to them for what they had done their own freedom and magnanimity;[1] but honoured them only while they were upright, and restrained their criminal attempts. You, O Athenians, acquit men who are guilty and plainly proved to be guilty of the gravest offences, if they merely say one or two witty things, and some fellow-tribesmen chosen to be their advocates petition for them: should you even convict any one, you fix the penalty at five-and-twenty drachms.

In former times the state herself was wealthy and flourishing, and no individual was raised above the multitude. Is proof wanting?[2] Whoever knows the style of house which Themistocles had, and Miltiades, and the illustrious of that day, perceives it to have been no grander than that of the multitude, while the public structures and edifices are so magnificent and beautiful, that room is not left for any succeeding generation to surpass them: yonder gateway, docks, porticoes, the Piræus, all the fabrics by which you see the city adorned. Now each of your statesmen has a private fortune so immense, that some of them have built their houses more splendid than many public edifices, some have bought up a quantity of land, more than all you in the court have amongst you: while, as to the state buildings which you put up and whitewash,

in accordance with the history which has come down to us. Miltiades was brought to trial for his unsuccessful attack upon Paros, and sentenced to pay a fine of fifty talents; which Cimon afterwards paid. (Herodotus, vi. 136.) Cimon, after his reduction of Thasos, was thought to have neglected opportunities of conquest in Macedonia, and was charged with having taken bribes from king Alexander. Upon this charge, in which Pericles appeared as one of his accusers, he was acquitted. (Plutarch, Vit. Cimon 14.) Upon his return from the Messenian war, in which he had advised the Athenians to send succour to Sparta, he lost his popularity, and his political enemies took advantage of it to accomplish his expulsion by ostracism. (Plutarch, ibid. 17.) In less than five years he was recalled. But he never underwent any trial upon which a fine was imposed on him. (See Thirlwall's History of Greece, iii. p. 18, note.)

[1] Pabst joins τῶν ἔργων with μεγαλοψυχίαν—*denn sie gaben ihnen nicht ihre Freiheit und ihr durch grossherzige Thaten erworbenes Selbstgefühl Preis.* So does Auger: "ils ne leur livroient ni leur liberté, ni la gloire de leurs exploits."

[2] Compare with this and what follows the similar passages in the third Olynthiac, pp. 35, 36. De Syntax. pp. 174, 175.

I am ashamed to say how paltry and miserable they are. But can you mention aught that you have won as a people and will bequeath, as your forefathers bequeathed Chersonesus, Amphipolis, the glory of noble actions?—glory which politicians of this stamp, with all the waste they make of it, are unable to extinguish, O Athenians, and no wonder. For Aristides then, who was empowered to assess the tribute,[1] did not increase his fortune by a single drachm; but, when he died, the country buried him; and you, whenever you required anything, had ampler funds in your treasury than

[1] This was the tribute raised by the confederate Greeks for carrying on the war against Persia. When the allies, offended by the conduct of Pausanias, transferred the command from Sparta to Athens, Aristides was chosen to assess this tribute, and so conducted himself as to give universal satisfaction, as we are told by Plutarch in his life of that statesman. Thirlwall's account of it is as follows: (Hist. of Greece, ii. p. 371.)

"It was Aristides who had the glory of establishing his country in this honourable and well-earned preeminence, as his personal character had been most instrumental toward inspiring the confidence on which it was founded. After ascertaining that the proposal of the Ionians was the result not of hasty passion, but of a settled purpose, he undertook the task, which was entrusted to him by general consent, of regulating the laws of the union and of its subordination to Athens. The object of the confederacy was to protect the Greeks in the islands and the coasts of the Ægean from the aggression of the Persians, and to weaken and humble the barbarians. All who shared the benefit were to contribute according to the measure of their ability to the common end: Athens was to collect their forces, to wield and direct them, not however with absolute and arbitrary power, but as the organ of the public will, possessing only the influence and authority due to the greater sacrifices she made to the common cause. Least of all was she to interfere in the constitution and internal administration of any of the allied cities. All were to be independent of her and of each other, except so far as they were bound together by the same danger and the same interest. Aristides executed the difficult and delicate task of fixing the assessments of the numerous members of the confederacy, so as to satisfy all without incurring even a suspicion of having turned one among so many opportunities of gain to his own advantage. Perhaps other Greeks might also have resisted the temptation: he seems to have been the only one that was acknowledged to be above calumny. Some of the allies were to furnish money: the more powerful were to equip ships. The whole amount of the yearly contribution was settled at 460 talents, about 115,000 pounds: Delos, the ancient centre of Ionian commerce and religion, was chosen for the treasury of the confederates, and its temples as the place where their deputies were to hold their congress."

all the rest of the Greeks, so that, for whatsoever period you voted an expedition, you went out with pay for the whole time. Now the persons who manage our state affairs have risen from indigence to wealth, and provided themselves with plenty to last them for support; whilst you have not provisions in your stores for a single day, but, when anything is to be done, you are destitute of means. For the people were formerly masters of the statesmen, but now are their servants. The fault is theirs who propose such decrees, and accustom you to despise yourselves and hold one or two individuals in respect. These persons then become the heirs of your renown and your possessions; you have not the least enjoyment of them, but are witnesses of the prosperity of others, and come in for nothing but to be cheated. How deep would be the groaning[1] of those men who died for freedom and for glory, who left memorials of so many noble deeds, could they see that Athens has acquired the rank and style of a dependant, and is deliberating whether she must guard the person of Charidemus! Charidemus! alas the day!

And yet this is not the cruel part of it, that we deliberate less wisely than our forefathers, whose merits are transcendent, but that we do it worse than any people. Is it not disgraceful—when these Æginetans, inhabiting so small an island and having no reason to be proud themselves, have not even to this day made a citizen of Lampis, who is the largest shipowner in Greece and who has embellished their city and port, but have with much reluctance granted him exemption from the alien-tax—when these accursed Megarians so well maintain their own dignity, that when the Lacedæmonians sent and requested them to make Hermon the pilot a citizen, who with Lysander captured two hundred ships on the occasion of our disaster at Ægos-Potamos, they replied that, when they saw him created a Spartan, they would themselves

[1] Lucian, in his Demosthenis Encomium, 5, compares this with the Homeric verse, Iliad vii. 125.

Ἦ κε μέγ' οἰμώξειε γέρων ἱππηλάτα Πηλεύς.

It appears to have become a common mode of expression. Other instances are referred by Schaefer and Heyne; to which may be added the saying of the Corinthian, δικαίως ἂν στενάξαι ὁ Διὸς Κόρινθος, &c. See the notes to the Frogs of Aristophanes, v. 440.

create him a Megarian[1]—and when the Orites, inhabiting only a fourth part of Eubœa, have so treated this very Charidemus, whose mother is a citizen there, (who and what his father is, I will not say; for we need not make too minute inquiries about him :) however, although he himself finds one-half of his pedigree, they have not to this day conceded to him the other half, but he is classed there among the illegitimate, just as here formerly the illegitimate were registered in Cynosarges[2]—I say, is it not disgraceful that you, men of Athens, after imparting to him your full franchise and conferring other honours, should give him this also in addition? For what reason? What ships did he ever capture for your benefit, that he is plotted against by the losers? What city has he ever taken and delivered into your hands? What perils has he encountered for your sake? What enemies of yours has he adopted for his own? No one can say.

I wish, before I sit down, men of the jury, to say a few words to you about the laws which we have exhibited: bearing them in mind, I think you will better be able to watch these men, should they attempt to mislead and impose on you. The first law has positively declared, that, if any one kill another, the council shall have cognizance: Aristocrates

[1] Xenophon (Hellen. i. c. 6, s. 32) says, Ἕρμων ὁ Μεγαρεὺς, ὁ τῷ Καλλικρατίδῃ κυβερνῶν, upon which Schneider remarks that he is so called, because he had acted as a citizen. Schaefer says that Xenophon speaks by prolepsis, as Hermon afterwards obtained the Megarian franchise. Of this however there is no evidence. May not Xenophon call him a Megarian, because he lived at Megara?

[2] Cynosarges was an eastern suburb of Athens, and formed one of the Attic townships. Here was a temple of Hercules and a gymnasium, which, as we learn from Plutarch, was frequented by strangers and Athenians of half-blood. Hercules was a half-god, born of a mortal mother, and was the natural patron of the base-born or illegitimate. (See Aristophanes, Aves, 1650, &c. Plutarch, Vit. Themist. init. Pausanias, i. 19.) The registration of this class which Demosthenes speaks of was, I presume, for the purpose of taxation. Pabst renders the words: *so wie ehedem hier zu Kynosarges die von nicht ehrbarer Geburt zusammensteuerten.*

The name of Cynosarges was derived from a white dog, which snatched a part of the victim which Diomus was sacrificing to Hercules. Diomus gave name to a quarter of the city called Diomeia, which led through the Diomeian gates into this suburb. (See Wordsworth, Athens and Attica, p. 177.)

Antisthenes gave his lectures in the gymnasium of Cynosarges, and thence the school of philosophy which he founded was called Cynic.

after the words, "if any one shall kill," has immediately added, that he may be lawfully apprehended. Keep this in your remembrance, that to try a man, and to proscribe him without allowing trial, are the most opposite things in the world. Again, the second law forbids one to ill-use or extort money from even a convicted murderer: the defendant, in making him liable to arrest, has allowed all these things; for it will be in the power of the captors to do what they please. The law requires him to be carried before the Judges, even though he be taken in the native land of the deceased: Aristocrates has permitted the very man who brings the charge to carry him to his own house, even though he has taken him in a foreign country. There are certain offences for which the law has given permission to take life: Aristocrates, without any preamble, even if life be taken under such circumstances, gives up to punishment a man whom the law lets off with impunity. If such misfortune has occurred to any one, the law requires that satisfaction shall first be demanded: Aristocrates on the contrary, without himself appointing any trial, without demanding satisfaction from the persons against whom his claim is, declares at once that the homicide may be arrested, and, whoever attempts to rescue him, he excludes that instant from the benefit of our alliance. The laws ordain that hostages to the number of three may be taken from the people among whom the homicide dwells, if they refuse to render justice: the defendant, if any one should rescue him from the captor, not liking to give him up before judgment, excludes him from our alliance immediately. The legislator forbids any one to introduce a law, unless he make it the same for all: the defendant frames a special decree for an individual. The law does not permit a decree to be of greater validity than a law: Aristocrates, when so many laws are in existence, annuls them, and establishes a decree.

Keep these things in your memory while you sit in judgment. Reject, refuse to hear the arguments by which they will strive to lead you astray, but bid them show you, where he has ordered any trial, or where he has said that the party convicted of murder shall suffer the penalty. Had he either said that any party tried and condemned elsewhere should be punished, or himself appointed a trial to determine the

fact of homicide, or whether it were justifiable or unjustifiable, he would have done no wrong. But when after employing the simple term of accusation, "if any one shall kill," and omitting to add, "and shall be convicted of murder," or "shall be adjudged to have killed," or "let him submit to judgment for the murder," or "he shall be amenable to the same penalty as if he killed an Athenian"—omitting (in short) everything that is just—he has inserted a clause for the arrest of the homicide; do not be imposed on, but rest assured that his decree is a most complete violation of law.

APPENDIX I.

CHARACTER OF THE LEPTINEAN ORATION.

THIS Oration, one of the first which established the high reputation of Demosthenes for eloquence, has always been greatly admired. Ancient critics, among whom it bore the title of the "Oration on the Immunities," are unanimous in praising it: nor has it received less commendation in modern times. It is not animated with the glowing eloquence of the Philippics, but it has merits and beauties of another kind. Here we have Demosthenes in the character of the sound constitutional lawyer, or rather the sagacious politician, warning his countrymen against the dangers of an unwise measure of legislation. The speech is such as an enlightened member of the English Parliament might address to the House of Lords or Commons, or to a Committee, upon the merits of some proposed bill or its clauses: with this difference however, that it is a rare thing for an Englishman to produce an elaborate work of art like this which the Athenian has handed down to posterity.

Dionysius says, that of all the speeches of Demosthenes this is the most elegant and perfect in point of composition.[1] Cicero speaks of it as being peculiarly subtle in argument.[2] Undoubtedly one of the remarkable characteristics of this Oration is its close, careful, and (speaking in a good sense) artful method of reasoning. But on another ground also it merits our peculiar attention; I mean, for the purity of sentiment and high tone of political morality which it breathes throughout. This, which in some measure redounds to the credit of the Athenians themselves, has not escaped the notice of ancient writers. Plutarch tells us, it was remarked by Panætius the Stoic, that Demosthenes usually represented virtue and honour as things to be chosen for their own sake; more especially in the Oration on the Crown, in that against Aristocrates, that on the Immunities, and the Philippics, where he urges his countrymen to disregard pleasure, profit, and ease, and in some cases to postpone even safety and security to the honourable and the becoming. If we examine the arguments of the Leptinea, we shall find this praise to be just.

(1) Χαριέστατος ἁπάντων τῶν λόγων καὶ γραφικώτατος. Dionysius, *ad Ammæum*, 724.
(2) Multæ sunt ejus totæ orationes subtiles, ut contra Leptinem *Orator*, 31.

While the orator does not lose sight of other topics likely to exercise an influence upon his hearers, such as the necessity of preserving to the people their privilege of making grants, the importance of holding out rewards as a stimulus to good conduct, the danger of alienating friends and benefactors, the illegal character of the proposed statute, and the like; he appeals still more confidently and vehemently to the noble and generous sentiments of his countrymen; reminding them that it was their duty to keep good faith, to maintain the character of their ancestors for truth and honour; that they should not do as a people what they would be ashamed to do as private individuals; that a good name was better than riches for a state. Gratitude was a topic naturally arising out of the question in debate; since by the law of Leptines certain rewards which had been given for services were to be abolished. To this Demosthenes recurs again and again, putting it in every kind of shape, and in connexion with it citing the names and deeds of many eminent benefactors. The case of Epicerdes the Cyrenæan was a striking one; he had assisted the Athenians at times when they were in the greatest distress, and when he could have had very little hope of ever receiving a return. "All people who rendered service should be requited," says Demosthenes, "but especially those who rendered it at a critical time like Epicerdes." He seems to dwell with particular pleasure on the glorious actions of Chabrias, whose son's cause he was partly advocating. Chabrias had lost his life in battle. Demosthenes presses this most happily upon the court:—"It would be shameful to deprive the son of a reward, which had been earned by making him an orphan. Chabrias was distinguished for being a safe and cautious general: but his caution was exercised purely on his country's behalf: his own life he willingly threw away to serve her." He winds up with a bold declaration to the jury—"It is not the law that is tried, whether it be a proper one or otherwise: you are on your probation, whether or no you are fit people to receive benefits in future." Gratitude is a frequent theme of declamation; and it is not a very difficult one; for the duty is acknowledged by all hearts. Demosthenes handles it not as a declaimer, but as an orator. Let us see how the same subject has been treated by Cicero. It is profitable and interesting to compare the two orators together. The Roman was deeply imbued with Attic lore, an ardent admirer of Demosthenes, often an imitator; yet how different are their styles. Thus he dilates on gratitude, in the Oration Pro Plancio, 33.

"Etenim, judices, cum omnibus virtutibus me affectum esse cupiam, tamen nihil est quod malim quam me et gratum esse et videri. Hæc est enim una virtus non solum maxima, sed etiam mater virtutum omnium reliquarum. Quid est pietas nisi voluntas grata in parentes? qui sunt boni cives, qui belli, qui domi de patriâ bene merentes, nisi qui patriæ beneficia meminerunt? qui sancti, qui religionum colentes, nisi qui meritam diis immortalibus gratiam justis

l mucribus et memori mente persolvunt? Quæ potest esse jucunditas vitæ, sublatis amicitiis? quæ porro amicitia potest esse inter ingratos? Quis est nostrum liberaliter educatus, cui non educatores, cui non magistri sui atque doctores, cui non locus ille mutus ipse, ubi altus aut doctus est, cum gratâ recordatione in mente versetur? Cujus opes tantæ esse possunt, aut umquam fuerunt, quæ sine multorum amicorum officiis stare possint? quæ certe sublatâ memoriâ et gratiâ nullæ exstare possunt. Equidem nil tam proprium hominis existimo, quam non modo beneficio sed etiam benevolentiæ significatione alligari: nihil porro tam inhumanum, tam immane, tam ferum, quam committere ut beneficio non dicam indignus, sed victus esse videare."

No less strong is the language of Shakspeare in the Twelfth Night, Act III. Scene 4.—

> I hate ingratitude more in a man
> Than lying, vainness, babbling, drunkenness,
> Or any taint of vice, whose strong corruption
> Inhabits our frail blood.

Demosthenes denounces the law of Leptines as tainted with the vices of envy and jealousy; vices not only odious in themselves, but un-Athenian: for it had always been the habit of his countrymen to admire and to reward distinguished merit of every kind: of which the funeral honours paid to the brave who fell in battle were an example. The people should rejoice at any glorious achievements of a fellow citizen; for by them the fame of the republic was exalted. In the same strain we find Cicero speaking, in the Oration Pro Archiâ, 9: "At iis laudibus certè non solum ipsi qui laudantur, sed etiam populi Romani nomen ornatur. In cœlum hujus proavus Cato tollitur: magnus honos populi Romani rebus adjungitur. Omnes denique illi Maximi, Marcelli, Fulvii, non sine commuui omnium nostrûm laude decorantur."

Again, he warns the Athenians in solemn but respectful terms—(and looking at what befel them in less than twenty years after, one cannot fail to be struck by the warning)—that they should not abolish the rewards formerly given for eminent services under the idea that such services were not then needed. An occasion might arise which called for extraordinary services, such as those rendered by the patriots of olden time. In legislation they ought not to assume the impossibility of such an occurrence. The language of their laws should be as cautious as that of common life, in which all arrogance of expression was eschewed, as offensive to gods and men. He appeals more especially to that reverence for Nemesis, which formed a part of the Greek religion. The admonition however is pregnant with eternal truth, and applicable to all times and circumstances.

I have said enough to show the high moral character of the Oration, which indeed cannot be too carefully studied. We are fortunate in having an excellent edition of it by F. A. Wolf, whose Commentary has not only cleared away a great many difficulties from the text, but

elucidated the whole subject of the Attic law to which it relates. Together with the speech of Demosthenes he has thought fit to publish that of Aristides the Rhetorician, a scholastic exercise upon the same subject, scarcely worth reading on its own account, but affording matter of interest to the learned from its being an imitation of the great Athenian master. The Editor assigns his reasons for publishing it in his Prolegomena, of which I subjoin an extract, translated and somewhat abbreviated:

"The Oration of Aristides belongs to a class which the Greek rhetoricians call Exercises; the Latin, Declamations. There were three different kinds of them. Some men wrote on imaginary arguments and general questions; others took up real subjects and causes, which they found in ancient history, and employed themselves in composing accusations or defences, speeches for or against wars or treaties, descriptions of manners, places, and countries. But since on subjects like these every man would add, suppress, or alter facts at his pleasure, partly carried away by the ardour of authorship, partly through apprehension that the necessity for repeating old and hackneyed stories would leave no scope for the praise of originality; truth was often so metamorphosed under their hands, that she became unlike herself: and from such cause to this day there remain in history some splendid fictions. Although these two classes which I have mentioned were in the highest estimation, when eloquence, the foster-child of ancient freedom, had been silenced and banished from the forum, degraded from her dignity by the domination of kings; yet they existed and were held in honour long before those times. Afterwards there arose a new tribe of rhetoricians; who, not satisfied with training their pupils to the general imitation of the ancients, ventured to propose for a sort of contest the very arguments which from them had received celebrity. Confident fellows one must call them, and forgetful of themselves and their age, to suppose that a subject, illustrated in the light of the forum by the power of pre-eminent genius in the flourishing days of Greece, could be brightened up afresh under the hands of *tiros* in the shade of the school! Yet even here the masters themselves led the way, entering first into the contest of art: and there were distinguished Sophists, who used, as an agreeable exercise, to declaim within their own walls against Philip of Macedon, against Midias, or against Catiline. One example of this kind is the Oration of Aristides, an eminent teacher of Rhetoric in the second century.[1] * * * *

(1) This would appear to have been a favourite subject in the schools of rhetoric. For, before Aristides, it was taken up by Lollian, who flourished in Hadrian's reign, as we learn from Philostratus in the Lives of the Sophists, i. 527. He has preserved a fragment of the declamation, the thunders of which are certainly not of a character which causes us greatly to regret their extinction. Attacking the Law of Leptines, on the ground that it prevented corn coming to Athens from the Euxine, he says—"The mouth of the Euxine is closed by a statute; a few words intercept the food of the Athenians; the same effect is produced by Lysander fighting and by Leptines legislating."

"The principal use of the Oration of Aristides is, that, since very few specimens of declamatory composition have come down to us, and none of them is more eminent than this, we may see, by comparing it with the speech of Demosthenes, how unsuccessful the imitation is, by what marks a style of meretricious ornament is distinguished from the natural beauties of the ancient and real eloquence. For how entirely different from that declaimer of the school does the Attic orator sound. The Leptinean speech is indeed one of the quiet kind, employed wholly in convincing, rather than exciting the hearer; and possesses not the force and grandeur of language and sentiments which we admire in the Philippics and some other speeches, which are usually regarded as models of the Demosthenic character. Here everything is calm, temperate, carefully worked out, and of an equable tenor. This indeed is the highest excellence of oratory, to know how the style should be varied according to the subject. And none better understood this art than our orator; and for this single reason one might think him justly preferable to all whom either that or any following age produced. So plain and concise is he in some of the private orations composed for small causes; so copious, dignified, and grand in his Philippics; that one would scarcely recognise the same hand in both. But between these two classes of his speeches there is a third, in which he opposes laws or popular decrees; and for which he has been specially commended by ancient critics. Of the highest rank in this class is the celebrated Oration on the Crown, though it is more akin to the loftier class. Next to this I am inclined to place the Leptinean; certainly, out of the four Orations in this same class, those against Androtion, Aristocrates, Aristogiton, Timocrates, none ought to be preferred to this; and only that against Androtion can be put on a par with it.

"The style of the Leptinea is so subtle, that it is scarcely surpassed by any writer except Lysias, who is all subtlety. And he that knows the force of this quality and the difficulty of attaining it, and is aware how highly the ancients rated it, will think, I am sure, that Cicero's testimony is a high one, when he commends the Oration on this special ground. Such an excellence indeed can only be appreciated by one who brings an ear habituated to notice various peculiarities of style: but the truth and beauty and loftiness of the sentiments must be perceptible even to readers of less learning. These are derived from the common source of everything that is most eminent in a speaker—an elevated and liberal mind that holds cheap what the vulgar regard as precious: which is best seen in those passages, where the orator contends that inviolability of faith and the honour of the commonwealth are to be preferred to all other considerations. Every part of this speech is full of such principles, and every argument turns on them: and therefore we are not surprised to read, that it was the favourite of Panætius the Stoic, who, it is well known, referred everything to honour, in conformity with

the precepts of his philosophy, and held that it was to be followed in every action, even though it might be repugnant to interest.

"What force and weight there is in the arguments by which Demosthenes refutes the reasoning of his adversaries! You would feel indignant if the judges had not decided in his favour, especially when that weight of argument is tempered throughout with the utmost mildness in refutation. This will be matter of surprise to those who have been told that there are few instances of it in Demosthenes. The orator however, accustomed as he was to attempt nothing unseemly or unsuited to the occasion, besides that he had other reasons perhaps inclining him to moderation,[1] would of course be influenced by the character of his opponent, and the age and rank of those who had been selected to defend the cause.[2] We are ignorant indeed who Leptines was; but I think we may be nearly sure he was a man of political influence and power, so that even Demosthenes might have thought himself obliged to spare his dignity, and to treat him with lenity and forbearance: so that, if anywhere he censures the individual, he does so with self-restraint, and never in bitter or insulting language. For when expressions appear a little rough to us, we must remember that they appeared very different to a Greek audience, and especially to Athenians, who were accustomed to hear their most eminent citizens assailing each other with the bitterest reproaches. Since the present Oration is free from any such deformity, it is so much the better suited to the feelings and temper of our age, and has a merit peculiarly recommending it to the modern studier of eloquence. Any one who has well considered the beauty and elegance of this speech, and has also carefully examined the art which is not apparent on the first view, will rise from its perusal with the feeling that he has derived great assistance both for criticism and for composition. There is one thing more, to which I would direct the reader's attention—I mean, the abundance and variety of topics into which Demosthenes has expanded his argument, penetrating (as it were) into the inmost recesses of the subject, yet not urging sophistically anything far-fetched or foreign to the question, but seizing and turning to his purpose every circumstance which could throw light upon it, or influence the judges in his own favour: so that one wonders what Phormio could have said on the same points, if he left all those topics for Demosthenes, when Demosthenes appears to have left nothing for any speaker that followed him."

I mentioned in the Argument to the Oration, that, with respect to the issue of this contest, which Dio Chrysostom states to have been in favour of Demosthenes, a doubt had been raised by Christopher Wordsworth in his "Athens and Attica." He tells us (at page 140),

(1) For example; that the time had gone by for punishing Leptines.
(2) The advocates. See page 49.

that in the outside of the southern wall, to the west of the Theatre, he found an inscription, of which the following is a translation:[1]

"The Cecropid tribe gained the prize with a chorus of boys, of which Ctesippus the son of Chabrias defrayed the expense."

Upon which he remarks:

"This small fragment of a marble slab is a curious historical document. It informs us of a fact which cannot be learnt elsewhere. It communicates the result of one of the most important orations of Demosthenes. His Oration against Leptines was composed in behalf of Ctesippus, the dissolute son of Chabrias, who is mentioned in the above inscription: its object was to secure to Ctesippus the immunity from public burdens, which he enjoyed in consequence of the exploits of his father, and of which the law of Leptines threatened to deprive him. Of these public burdens the Choragia was one of the most onerous. This marble presents us with a proof that Ctesippus performed the office of Choragus. Demosthenes therefore failed in his attempt."

In a note, which is inserted below,[2] he argues from the language of Dio Chrysostom, that his statement is not worthy of credit: for the language of Dio seems to import that Leptines was condemned in person; whereas we know from the Oration of Demosthenes, that this was not so, but that Leptines was safe, and the law itself only was impugned.

With respect to this last point, I should be inclined to think with F. A. Wolf, that the words of Dio, though perhaps somewhat loose, do not necessarily import anything further than that Leptines lost the verdict. With respect to the inscription, I can only venture to suggest, that it may be reconciled with Dio's statement, by supposing, either that Ctesippus performed the service in the interval while the law was in force, after the prosecution of Bathippus had been withdrawn, and before the verdict in favour of Demosthenes; or that Ctesippus volunteered to undertake an office which by law he was not compellable to serve.

(1) The original is, Κεκροπις παιδων ενικα Κτησιππος Χαβριου εχορηγει.

(2) "Dio Chrysostom indeed asserts that Leptines was condemned; ἑάλω γραφῆς. This we know to have been impossible from the nature of the suit. The legal term (προθεσμία), in which Leptines was subject to prosecution, had expired. It is singular that F. A. Wolf should have approved this statement of Dio Chrysostom, when he himself observes in the next page, that the title πρὸς Λεπτίνην, and not κατα Λεπτίνου, prefixed to the Oration, Leptinem præsentem in judicio signat, non reum factum." The words of Dio are—Λεπτίνης τις εἰσήνεγκε νόμον, ὡς χρῆν τὰς ἀτελείας ἀφελέσθαι τοὺς ἔχοντας παρὰ τοῦ δήμου, δίχα τῶν ἀφ' Ἁρμοδίου καὶ Ἀριστογείτονος, καὶ μηκέτι τολοιπὸν ἐξεῖναι διδόναι μηδενὶ τὴν δωρεὰν ταύτην. Τί οὖν; ἔσθ' ὅπως παρεδέξαντο τὸν νόμον; Οὐμενοῦν, ἀλλ' ἑάλω γραφῆς. Oratio Rhodiaca, 31, p. 635. Edit. Reiske.

APPENDIX II.

THE OFFICIAL SERVICES.

I AM here to speak of the duties of Choragus and Gymnasiarch, the feasting of the tribes, and the conduct of religious embassies. These were called Encyclic or Ordinary Services,[1] because they regularly recurred, and were thus distinguished from the Trierarchy, which was an extraordinary one, to be performed only in time of war. They were partly of an honorary and partly of a burdensome character, the performance being attended with considerable expense; and therefore they were exacted only of the wealthier classes. That they were established as early as the reign of the Pisistratids, we are informed by Aristotle in his Œconomics.[2] They were afterwards regularly kept up, and regarded as an important part of the public economy of Athens: for, although the state derived no benefit from them for the necessary purposes of administration, they contributed to defray the cost of those scenic exhibitions and amusements, to which the Athenians were so devoted, and which indeed formed a part of their religion. Each tribe nominated such of its members as were qualified to undertake the burdensome duties; no one (it seems) being liable to them, whose estate was less than three talents. The only persons regularly exempt were the Archons, heiresses, minors, and orphans until the second year after their coming of age. As to special exemptions conferred by way of honour, enough has been said in the Leptinean Oration.

I. The Choragus was a person who provided a chorus to sing, dance, or play at any of the public festivals. In the Athenian drama the chorus was by no means the least important part, nor the least

(1) Ἐγκύκλιοι λειτουργίαι. On the word λειτουργία F. A. Wolf has the following note in his Prolegomena to the Leptinean Oration, s. 86:

"Ulpian ad Orat. p. 494. Λεῖτον ἐκάλουν οἱ παλαιοὶ τὸ δημόσιον, ὅθεν λειτουργεῖν το εἰς τὸ δημόσιον ἐργάζεσθαι ἔλεγον. Ad hoc confer Herodotum, vii. 197. Etymol. M. Ammon. et Mœrid. in v. λειτουργὸς vel λειτουργεῖν, et ibi Valcken. et Pierson. Scilicet voces sunt solâ formâ diversæ, utpote a λαὸς et λεὼς ductæ, λάϊτος, λέϊτος, λεῖτος, λήϊτος, λῇτος, *popularis*, *publicus*. E postremâ formatum ληιτουργεῖν recte Piersonus veteribus Atticis vindicat."

That the λειτουργίαι were not peculiar to Athens, but existed in other parts of Greece, and particularly in the Ægean islands, appears from various sources. See Herodotus, v. 83. Plutarch, Vit. Aristid. 1. Isocrates, Æginet. 391.

(2) Cited by F. A. Wolf, ibid. 87, note 60. He says of Hippias: "Ὅσοι τριηραρχεῖν ἢ φυλαρχεῖν, ἢ χορηγεῖν, ἤ τινα εἰς ἑτέραν λειτουργίαν τοιαύτην ἤμελλον δαπανᾶν, τίμημα τάξας μέτριον. "Ubi sine dubio" (says the learned critic) "verbum φυλαρχεῖν imprimis ad ἑστίασιν pertinet."

costly item in the performance. A company of fifteen was usually required for tragedy, twenty-four for comedy. The Cyclic or Dithyrambic chorus was composed of fifty men or boys, who sang to the lyre, dancing or marching in step to the music. There were also the Pyrrhicists, who performed the war-dance; and the band of flute-players, which, as we learn from the Oration against Midias was the most expensive of all.[1]

It was the business of the Choragus to find the choristers for these various exhibitions, to pay for their training, and to maintain them during the period of service. Their diet was to be such as would keep them in good training order, their limbs agile, their voices strong and clear. A chorus of boys was not always easy to be got; for parents did not like to give up their children for the purpose. It seems however, they might be pressed into the service, or even taken by violence from their homes; at least, the practice was connived at; for the people were determined to have their diversion at any rate.[2] The expense of all this fell upon the Choragus; and he had also to provide dresses, crowns, masks, and other ornaments and decorations.

His office, though sometimes discharged by deputy, was strictly a personal one. He was expected to superintend the arrangements, and to be present during the performance, attired in the proper costume, as a sort of master of the ceremonies. Hence his name, signifying that he was Choir-master, or Director of the Chorus. And hence minors and heiresses, who were incapable of serving the office in person, were exempt from it.

The expense was increased by the competition among the different Choragi, especially in dramatic contests. Tripods were awarded as

(1) Burges, in the Glossary to his translation of the speech against Midias, under title Χορηγεῖν, writes as follows:

"None have been able to explain why the chorus of flute-players was the most expensive of all. The fact is, they had to be brought either from Bœotia or Asia Minor; and at Athens, as elsewhere, foreign artists were more expensive than native. Had Donaldson been aware of this fact, he would not have said that the Choregus had nothing to do with the dramatic performers; nor would he have said that, had the actors been paid by the Choregus, the dramatic choruses would have been the most expensive; still less would he have supposed that the actors were paid by the dramatists, had he remembered that plays were frequently acted after the death of the authors; nor would he have fancied they were paid by the state, had he thoroughly understood the celebrated comparison made by Demosthenes between himself and his rival, 'You was an actor: I paid the chorus-master, and therefore your fellow-actors.' For be it remembered that Æschines was a third-rate performer, and not merely one of the corps de ballet; and had he been paid by the state, his profession would have been rather an honour than the reverse."

Of the same opinion as to the last point is F. A. Wolf: Prolegomena in Orat. Lept. 91:

"Nihil dubitandum, quin ejusdem qui choris scenicis sumptum suggereret commissio totius ludi esset. Nam omnino chorum, tanquam fabulæ primariam partem et eam, unde antiquitus omnis ratio scenæ effloruit, ita Græci usurpare consueverunt, ut verbi vis ad universam fabulam spectet."

(2) In the Oration of Antiphon De Choreutâ (11, Ed. Bekker,) the Choragus boasts that he got his band of choristers without resorting to any harsh measures. He is defending himself on a charge of murder, preferred by the father of a boy, who, while he was under training in his house, had taken some poison to improve his voice

prizes for the best performance; but the cost of these also was defrayed by the victor. Every such tripod was inscribed with the name of the successful Choragus and his tribe, and preserved as a memorial in a chapel near the theatre. In course of time so many of these chapels were erected, that they formed a row or street, called the Street of Tripods, leading from the theatre in a north-easterly direction to the Acropolis.[1]

II. The Gymnasiarch was an officer appointed by each of the tribes to superintend the Gymnasia, or gymnastic schools, where the youth of Athens received that training which imparted health and vigour to their bodies. By the laws of Solon considerable powers were vested in these officers, not only to enforce performance of the prescribed exercises, but also to preserve decorum and good behaviour, to prevent improper persons from intruding into the schools, and to guard the youths from the corruption of evil company.[2] In later

(1) Pausanias, i. 20. The Prytaneum mentioned in this passage is that of later times. Christopher Wordsworth thus writes, in his Athens and Attica, page 153:

"The line of similar fabrics, of which the small circular building of the most graceful Corinthian proportions, called the Choragic Monument of Lysicrates, is the only surviving relic, must have possessed great interest, both from their object and execution. They were a series of temples forming a street. These temples were surmounted by finials which supported the tripods gained by victorious Choragi in the neighbouring theatre of Bacchus, and here dedicated by them to that deity, the patron of dramatic representations. From the inscriptions engraved on the architraves of these temples, which recorded the names of the victorious parties, and the year in which the victory was gained, the dramatic chronicles or didascaliæ were mainly compiled. Thus these small fabrics served the purposes at the same time of fasti, trophies, and temples. What a host of soul-stirring thoughts must have started up in the mind of a sensitive Athenian, as he walked along this street!"

(2) See the Oration of Æschines against Timarchus (p. 2), where these regulations are minutely described. On the subject of the Gymnasia and Palæstræ full information may be obtained in Becker's Charicles, Excursus to Scene V. On the abuses of the Gymnasia he remarks as follows (Transl. p. 293):

"Of all the peculiar Hellenistic institutions the Gymnasia are perhaps the most important, for none exercised so powerful an influence on the entire development and various phases of Greek life—none at once awakened the noblest feelings, and fostered the most impure passions—none formed to the same extent the incitement to glorious deeds and the seduction to idle pastimes—none so much enhanced the vigour of the corporeal powers, and at the same time gave them so false a direction—none made them so alive to the beauty and nobility of the human form, and opened so broad a field for the grandest creations of art—and lastly, none betrayed youthful innocence into such degrading abuses—as was the case with the exercises of the Gymnasia. . . . . We cannot wonder that the stern Romans, who valued such exercises merely for their military and diætetic advantages, judged unfavourably of Grecian gymnastics . . that they induced inactivity and idleness; that what should have been the main objects, the strengthening and exercising the body, were lost sight of; that instead of the use of weapons, mere unprofitable arts were taught; and that the body was too highly fed on unnatural diet to become fitted for other exertions. Many voices even in Greece itself re-echoed this imputation, in which, it must be confessed, there is a good deal of truth, especially as respects the athletes, the whole business of whose lives was the exercises of the Palæstra. At Sparta, for instance, πυγμή and παγκράτιον were entirely prohibited. There also athletics were not generally the object of gymnastics."

On the difference between the Gymnasium and the Palæstra he observes:

"The Gymnasium was a place including grounds for running, archery, javelin-practice, and the like, along with baths, and numerous resorts for those who only sought amusement; while the Palæstra, on the other hand, was the regular wrestling school, where originally wrestling, πάλη, and the *pancration*, were principally

times such matters were less attended to, though other duties, which ministered to the pleasures of the people, continued to be punctually discharged. For the Gymnasiarch had to provide for the gymnastic games, which were celebrated at divers of the Athenian festivals. He trained the runners, wrestlers, and other athletes, whom he generally chose from the best pupils of the gymnasium: he fitted up the stadium or other place of exhibition, and made all the necessary preparations at his own cost.

Among these games the most expensive was the Lampadephoria, or running with the torch, in which the Athenians took great delight. The torch was carried by a chain of runners placed at certain distances; each of whom handed it to the next in station, till it reached the last. The prize was adjudged to that set of runners who carried it unextinguished to the goal. Lucretius, in a line familiar to classical readers, compares the transmission of the torch to the succession of human generations:—

"Et quasi cursores vitai lampada tradunt."

The principal occasions on which the Lampadephoria was celebrated were the festivals of Prometheus, Vulcan, and Pallas. The reason is obvious. Prometheus was the giver of fire to mortals; Vulcan applied it to the forge; Pallas to other useful arts. The runners started from the altar of the three deities in the Ceramicus, and ran about half a mile to the Acropolis. There was also a torch-race in honour of Pan, introduced after the battle of Marathon; and another in honour of the Thracian Artemis, instituted in the time of Socrates, when the race was for the first time performed on horseback.

III. Feasting of the tribes was an obligation of not very frequent occurrence. Some rich Athenian was selected to give a banquet to his fellow-tribesmen. It was connected with sacred objects, and served to keep up a friendly intercourse between the members of the tribe.

IV. The conduct of religious embassies,[1] which the Athenians sent to Delos, Delphi, or elsewhere, either to consult an oracle, or to perform a sacrifice, or to attend the periodical meetings of the Greeks, was entrusted to the more wealthy citizens, on whom the greater part of the expense devolved, though a certain allowance was made them by the state. These were not occasions for parsimony. The envoy represented the city of Athens. It was for her honour

taught and practised. That the Palæstra was not necessarily a private institution is clear from Xenophon, de Rep. Athen. ii. 9: ὁ δὲ δῆμος αὐτὸς αὑτῷ οἰκοδομεῖται ἰδίᾳ παλαίστρας πολλάς, κ. τ. λ. The distinction which Krause has attempted to establish, that the παλαίστρα was chiefly for the use of boys, is quite untenable. Æschines uses the words interchangeably; and Antiphon, de Cæd. Invol. p. 661, speaking of boys only, has, μελετῶν μετὰ τῶν ἡλίκων ἀκοντίζειν ἐπὶ τῷ γυμνασίῳ. Confer Lucian, Navig. 4, where the young men betake themselves to the Palæstra. When Solon forbade slaves both γυμνάζεσθαι, and also ξηραλοιφεῖν ἐν ταῖς παλαίστραις, all the kinds of gymnastic exercises are included."

(1) The conductor was called Ἀρχιθέωρος.

that he should appear to advantage; and want of liberality was no vice of an Athenian. Nicias, who conducted the embassy to Delos, when the great Ionian festival was revived,[1] expended a large sum of money in order to make an appearance worthy of his country. Landing at Rhenea, which is separated by a narrow channel from Delos, he laid across the strait a bridge which he had brought from Athens, covered with ornaments of tapestry and gold: over this he marched in grand procession, with a band of music, to the temple of Apollo. After celebrating the games, he presented to the god a brazen palm-tree, and gave ten thousand drachms for a piece of ground, which he dedicated to the service of the temple, directing that the profits should be laid out in an annual feast and sacrifice, at which the Delians were to pray for the prosperity of the donor. Plutarch tells us, the liberality of Nicias was remembered by the Delians in his time.[2]

But the greatest display of magnificence was that made by Alcibiades at the Olympic games shortly after the peace of Nicias: when he entered seven chariots to contend in the race, and gained the first, second, and fourth prizes; and afterwards gave a splendid feast to the whole assembly of spectators. Singular honours were paid him on this occasion by the subject-allies of Athens. The Ephesians pitched for him a beautiful tent; the Chians furnished him with provender for his horses and beasts for sacrifice; the Lesbians with wine and provisions. Thucydides represents him as boasting of this display in a speech to the Athenian assembly.[3]

F. A. Wolf seems to be of opinion, that these compulsory services were a great hardship on the better classes at Athens.[4] They do not appear however to have been complained of in the flourishing period of the republic. All took the burden in turn; no man being compellable to serve more than once in two years, nor more than one office at a time. We find citizens frequently volunteering to defray charges to which by law they were not liable, and incurring much greater expenses than there was any necessity for. Nicias and Alcibiades, while they exhibited a munificence which few could imitate, are yet examples illustrating the general spirit of the age.

(1) In the sixth year of the Peloponnesian war. (Thucydides, iii. 104.)
This great Ionian meeting (Πανήγυρις) was quadriennial. There was a lesser Delian festival, celebrated every year, to which the Athenians sent the sacred galley hence called Θεωρίς.

(2) Plutarch, Vit. Nic. 3.

(3) Plutarch, Vit. Alcibiad. 12. Thucydides, vi. 16.

(4) Prolegomena in Orat. Lept. s. 118. "Ex his quæ disputavi facilis est existimatio, quàm onerosa munera fuerint, quantumque tum periculi habuerit divitem esse. Et postulabat civitas quasi jure suo, uti facultates quisque suas in publica commoda et ornamenta profunderet, non laborans illa, quin quis choragiis aut trierarchiis ad egestatem redigeretur." He cites Xenophon, De Republicâ Athen. i. 13.
Similar language is used by Isocrates (De Antid 165, 170, &c. Ed. Bekker.) But he writes in a spirit of ill-humour and exaggeration. See the remarks of Thirlwall in his History of Greece, v. 242.

In times of distress, when not only the funds of the state but the means of private citizens were exhausted, it became of course more difficult to provide for the public amusements; and we cannot be surprised, if men possessed of a little property were not inclined to entertain their fellow-citizens at a great expense. Towards the close of the Peloponnesian war, and for some time after, the choragic service (like the trierarchal) was divided between two: but when the people had recovered from their calamities, they reverted to the ancient practice.

The orators abound in allusions to these official services, both in their political and in their forensic speeches. Liberality in discharging them was a ready way of becoming popular. Therefore even in courts of justice the parties, addressing a jury not unlike an assembly of the people, claim credit to themselves and their friends for the readiness with which they had undertaken the duties of choragus, &c., and the large sums of money which they had expended upon them, while they reproach their adversaries with backwardness and illiberality in such respects, and not unfrequently with concealing their property in order to escape the burden. I shall present the reader with a few specimens of this kind of argument, which will at the same time illustrate the subject before us and exhibit the temper of an Athenian audience.

The first is from the speech of Lysias, written for a client charged with the offence of bribery:[1]

"I came of age in the Archonship of Theopompus, and being appointed Choragus for tragedy, I spent thirty minas, and three months after I gained the prize at the Thargelian festival with a chorus of men, and spent two thousand drachms. In the Archonship of Glaucippus I laid out eight hundred drachms on a band of Pyrrhichists at the great Panathenæa. Again, providing a chorus of men for the Dionysian festival in the same year, I gained the prize, and spent (including the dedication of the tripod) five thousand drachms; and in the Archonship of Diocles at the lesser Panathenæa three hundred for a Cyclic chorus. In the mean time I was Trierarch for seven years, and expended six talents. And although I was making these large outlays, and daily risking my life for you and remaining abroad, I have nevertheless paid for property-tax first thirty minas and then forty. As soon as I returned home, in the Archonship of Alexius, I was Gymnasiarch for the Promethean festival, and I was victorious, having laid out twelve minas: and afterwards I was appointed to furnish a chorus of boys, and expended more than fifteen minas. In the Archonship of Euclides I furnished a chorus of comedians for Cephisodotus, and was the victor, and spent (including the dedication of the ornaments) sixteen minas; and at the lesser Panathenæa I furnished a Pyrrhic chorus of beardless boys and spent seven minas. I have been victor with my trireme in a race off the coast of Sunium,

(1) Oration xxi. p. 161.

when I spent fifteen minas. And besides I have conducted religious embassies, and superintended the Arrhephoria and other services of the like description, which have cost me upwards of thirty minas. And of these sums which I have enumerated, had I chosen to perform my service according to the letter of the law, I should not have expended the fourth part.

* * * * * *

"Having run so many hazards for your sake and conferred so many benefits upon the commonwealth, I now ask, not (like other men) to receive a recompense from you, but not to be deprived of my own property, conceiving that it would be a disgrace to you to take it from me either with or without my consent. And I care not so much if I must lose my estate; but I cannot endure to be insulted, or that people who evade the public charges should imagine, that, while I am unrequited for what I have spent upon you, they are thought to have acted wisely because they have thrown none of their property away. If now you will hearken to me, you will at the same time give a righteous verdict and adopt that course which is beneficial to yourselves. You see, men of the jury, how scanty are the revenues of the commonwealth, and how they are plundered by our leading statesmen: so that you may well believe your surest revenue is the substance of those who are willing to defray the public charges. If then you are prudent, you will take as much care of my estate as you would of your own private fortunes, knowing that you will have the advantage of all that I possess the same as you had before. I think you are all aware, that I shall be a much better manager of my own finances than those who manage for you the finances of the commonwealth. Should you reduce me to poverty, you will injure yourselves likewise; and other men will divide my effects among them, as they have divided everything else."

The next is from the Oration of Isæus on the Estate of Apollodorus, written for a person claiming as son by adoption against the nearest of kin:[2]

"I beseech you to give me redress both for the sake of Apollodorus and for the sake of his father. You will find, they were not useless citizens, but as zealous as they could be in your service. His father, besides having served all the other burdensome offices, continued his whole time to do the duty of Trierarch; not getting his ship in an association like men of the present day, but at his own cost; not jointly with another, but singly; not every other year, but without

(1) This was a festival, celebrated in the month of Scirophorion, in honour of Pallas: in which the principal ceremony was the carrying of some sacred vessels by young girls chosen for the occasion from the best Athenian families. Some derive the name ἀπὸ τοῦ τὰ ἄῤῥητα φορεῖν, because the contents of these vessels were kept a mystery. Others say that ἀῤῥηφόρια is only another form of ἐῤῥηφόρια, or ἐρσηφόρια, and derive it from Ersе, the daughter of Cecrops, whose worship was associated with that of Pallas.

(2) Oration vii. p. 67.

intermission; not in a shabby way,[1] but providing the best possible equipments. For which you not only honoured him in remembrance of his conduct, but prevented his son being deprived of his property, and compelled the parties in possession to restore what belonged to him. Apollodorus himself did not (like Pronapes) return a small capital, but was assessed as a knight and deemed himself worthy to hold magistracies: he was not one who sought to usurp the property of others without choosing to do any good to you, but exhibiting openly before you all that he possessed, he zealously performed whatever you required of him, and without doing any wrong endeavoured to live liberally on his own means, content to spend a moderate portion on himself, while he preserved the rest for the commonwealth, that it might be sufficient for the public charges. And out of this what office of burden did he not satisfactorily discharge? What rate was he not among the first to pay? What duty has he omitted? He gained the prize also for a chorus of boys, and that tripod stands as a memorial of his liberality. But what ought a respectable citizen to have done? Ought he not, where other men were grasping at what did not belong to them, to have abstained from such conduct, and endeavoured to have preserved his own? Ought he not, where the state requires money, to be among the first to contribute, and conceal none of his effects? Well then: such a man was he: and it will be just that you should make him this requital, giving effect to his intention concerning his own property. You will find that I also have been, considering my age, not a bad or a useless citizen. I have served the state in her campaigns: I perform what is required of me: that is the duty of people at my age. You ought then, both for their sakes and mine, to have regard for my interests; especially as my adversaries have wasted and sold and destroyed a trierarchal estate of five talents, whilst I have both already performed the official services, and shall continue to do so, if you will effectuate the intention of Apollodorus by restoring to me this estate."

In a style very similar to this is the reasoning of Demosthenes in the Oration against Aphobus:[2] in the composition of which, we may remember, he is said to have been assisted by his master Isæus:

(1) Ἀφοσιούμενος: "Doing no more than the law absolutely required: barely performing his duty: that is, doing it in a mean and shabby way."

(2) Contra Aphobum, B. 842. And see the Oration against Midias, ante, p. 116, &c. In the same way the Roman Ædiles endeavoured to gain popularity by magnificent shows. Cicero thus remarks on the practice in his second book De Officiis, s. 16:

"Omnino duo sunt genera largorum. quorum alteri prodigi, alteri liberales. Prodigi, qui epulis et visceratiônibus et gladiatorum muneribus, ludorum venationumque apparatu, pecunias profundunt in eas res, quarum memoriam aut brevem, aut nullam omnino sint relicturi. Liberales autem, qui suis facultatibus aut captos a prædonibus redimunt, aut æs alienum suscipiunt amicorum, aut in filiarum collocatione adjuvant, aut opitulantur vel in re quærendâ vel augendâ. [Confer Demosth. de Coron. 316.] Itaque miror, quid in mentem venerit Theophrasto, in eo libro quem ed divitiis scripsit: in quo multa præclare; illud absurde. Est enim multus in laudandâ magnificentiâ et apparitione popularium munerum: taliumque sumtuum facultatem fructum divitiarum putat. Mihi autem ille fructus liberalitatis, cujus exempla

"It is not proper, men of the jury, either that I should be refused redress, or that my opponent should retain the wealth he has plundered. With regard to myself, though you have no actual experience of my disposition towards you, it is fair to presume that I shall not be worse than my father. Of the defendant you have some experience; and you well know that, although he has inherited a large fortune, he has not only shown no liberality to the public, but even grasps at the property of his neighbour. Bear in mind this, with the other facts of the case, and give your votes according to justice You have the clearest evidence to guide you, the evidence of witnesses, circumstances, probabilities, these men's own acknowledgment that they took possession of my estate. They say they have spent it; a falsehood; for they have it still. But let this warn you to be careful of my interests; seeing that, if I recover my rights by your assistance, I shall naturally be grateful to you for restoring them, and glad to defray the public charges; whereas the defendant, if you let him keep what belongs to me, will do nothing of the kind: for do not suppose, that he will choose to contribute in respect of property which he denies having received: no: he will rather conceal it, to justify the verdict in his favour."

It remains to notice the services imposed on the aliens who resided at Athens. It appears, they were liable to perform the Choragia at the Lenæan festival, where the actors were allowed to be foreigners; and occasionally to entertain the tribesmen at a banquet. There were also certain duties of a less honourable but not very burdensome nature, which were intended to remind them of their inferior and dependent position. These were the Hydriaphoria and Sciadephoria: the first of which was performed by their wives, who carried vessels of water before the wives of citizens, when they walked in procession at the Panathenæa; the second by their daughters, who held parasols before the Athenian maidens on the same occasion.

pauca posui, multo et major videtur et certior. Quanto Aristoteles gravius et verius nos reprehendit, qui has pecuniarum effusiones non admiremur, quæ fiunt ad multitudinem deleniendam. At ii, qui ab hoste obsidentur, si emere aquæ sextarium minâ cogantur, hoc primo incredibile nobis videri, omnesque mirari: sed, cum attenderint, veniam necessitati dare: in his immanibus jacturis infinitisque sumtibus nihil nos magnopere mirari; cùm præsertim nec necessitati subveniatur, nec dignitas augeatur; ipsaque illa delectatio multitudinis sit ad breve exiguumque tempus; [Confer Demosth. c. Lept. 456.] eaque a levissimo quoque; in quo tamen ipso una cum satietate memoria quoque moriatur voluptatis. Bene etiam colligit, hæc pueris et mulierculis et servis et servorum simillimis liberis esse grata; gravi vero homini, et ea quæ fiant judicio certo ponderanti, probari posse nullo modo: quanquam intelligo, in nostrâ civitate inveterasse jam a bonis temporibus, ut splendor ædilitatum ab optimis viris postuletur."

APPENDIX III.

RESIDENT ALIENS.

A LARGE number of foreigners took up their abode permanently at Athens, some of whom were exiles driven from their native countries by war or revolution or domestic calamity; many were attracted by the beauty and pleasantness of the city, by the charms of Athenian society and the liberality of the people; by the opportunities which it afforded for instruction, or by its advantages for carrying on mercantile business. In the best times of the republic it is calculated that there were forty or fifty thousand aliens dwelling at Athens, including women and children. They were principally of Greek race, but not entirely: some were freedmen, or the descendants of freedmen, who had been brought to Athens in servitude from Asia Minor or other countries, and having afterwards been liberated by their masters, were ranked in the class of domiciliated aliens. All were under the protection of the Polemarch.

Whilst they were treated on the whole with great liberality, they were not considered as forming a part of the state, or as entitled to any of the privileges of citizens. Not only were they excluded from exercising political rights, such as voting, sitting on juries, and the like; but they could not even plead their own causes in courts of justice, or transact any legal business by themselves, whether of a public or a private nature; for such purpose each of them was obliged to have a citizen for his *Prostates* [1] or Patron, who performed all necessary functions on his behalf, and was responsible for his good conduct. It was of great importance to have a respectable Patron, and the alien's own position very much depended upon it.[2] A freedman's Patron was his former master, to whom, though free, he still owed certain duties of respect and acknowledgment, for the neglecting of which he might be sued at law.[3]

(1) He was said Προστάτην ἐπιγράψασθαι, to choose a patron; whose name was of course entered in the public register. If he continued to reside for a certain time without choosing a patron, he was liable to be proceeded against by a γραφὴ ἀπροστασίου, as to which see Meier & Schömann, Att. Proc. 315—318.

(2) Isocrates (De Pace) says: τοὺς μετοίκους τοιούτους εἶναι νομίζομεν οἵους περ ἂν τοὺς προστάτας νέμωσι. And to this Aristophanes is thought to allude in the *Peace*, v. 685.

ἀποστρέφεται τὸν δῆμον ἀχθεσθεῖσ' ὅτι
αὑτῷ πονηρὸν προστάτην ἐπεγράψατο.

(3) By a δίκη ἀποστασίου, in which, if convicted, he was punished with slavery; if acquitted, he was released from obligation to his former master.

An alien could not contract a legal marriage with a citizen. Nor could he acquire any landed property by law. And therefore aliens lived mostly in lodging-houses,[1] the letting of which was a profitable speculation for wealthy citizens. A large number of them were in the Piræus, where the aliens chiefly resided for the convenience of trade and commerce. Xenophon recommended that the resident aliens, or at least the most respectable of them, should have permission to become house-proprietors, and be encouraged to build houses and invest their money in them.[2]

In return for the protection afforded them, each head of a family paid a yearly tax of twelve drachms; a widow paid only six; and a freedman three obols in addition. Any one refusing to pay the tax, or assuming the rank of a citizen, was liable to be prosecuted, and on conviction sold as a slave.[3]

Aliens were liable to the property-tax, and formed into a distinct board for that purpose. As they could not be landowners, they were rated for personal property only, and perhaps for that very reason they were assessed at a higher rate than the citizens,[4] and doubtless were subject to a stricter inquisition in order to discover the real value of their estates. Of the offices which they were called upon to serve I have spoken in the last Appendix. Frequent mention is made by the historians of their employment in the fleets and armies. This duty does not appear to have been regular, but imposed as occasion required.[5]

The son of an alien born in Athens did not thereby become a citizen, nor had he any different status from his father. Citizenship depended not on the place of birth, but on parentage. It could only be conferred by the votes of two consecutive popular assemblies, in the last of which six thousand votes must have been given by ballot. In times of war and calamity, when great sacrifices became necessary, large creations of citizens took place; as after the battle of Chæronea. At other times citizenship was only granted for some extraordinary merit. It was much more common however to confer upon an alien the rank of *Isoteles*, which, as the title imports, put him on an equal footing with citizens in regard to taxes, including exemption from the annual tribute, and dispensed with the necessity of his having a Patron. He was then permitted also to hold land and houses, and to work the mines. There were some further privileges attached to the position of an Isoteles, which are not exactly known. The better opinion is, that he was not eligible to magisterial offices, nor had the right of voting or sitting on juries, nor was registered as a member of any township. It appears however that he was capable of being

(1) Called *συνοικίαι*. See my article under that title in the Archæological Dictionary. (2) De Vectigal. ii. 6.
(3) See my article *ξενίας γραφή* in the Archæologica Dictionary.
(4) Demosthenes, Cont. Androt. 612.
(5) See Thucydides, i. 143, ii. 13, iii. 16, iv. 90.

an Arbitrator.[1] On account of his holding this middle rank between a citizen and an alien, I have in my translation called the Isoteles *a denizen*.[2]

The trade of Athens fell a good deal into the hands of the resident aliens, owing in some measure to that feeling from which even Athenian minds were not wholly free, and which prevailed more especially among the higher classes—that trade was not respectable. We know indeed that many citizens embarked large sums in mercantile speculations and money-lending: many possessed factories, and made considerable profit by them: for example, the father of Isocrates was a flute-maker; the father of Demosthenes was a sword-cutler: but their workmen in almost all cases were slaves, the master doing little more than superintending the accounts and receiving the profits. At all events the retail trade, together with a good portion of the rest, was engrossed by the foreign settlers.[3]

(1) See Schömann, *de Comitiis*, 81. Boekh's Public Economy of Athens, Transl. ii. 316.

(2) Whose position is thus explained in Blackstone's Commentaries, i. 374:

"A denizen is an alien born, but who has obtained *ex donatione regis* letters patent to make him an English subject; a high and incommunicable branch of the royal prerogative. A denizen is in a kind of middle state, between an alien and natural born subject, and partakes of both of them. He may take lands by purchase or devise, which an alien may not; but cannot take by inheritance: for his parent, through whom he must claim, being an alien, had no inheritable blood, and therefore could convey none to the son. And, upon a like defect of hereditary blood, the issue of a denizen, born before denization, cannot inherit to him; but his issue born after may. A denizen is not excused from paying the alien's duty and some other mercantile burdens. And no denizen can be of the privy council or either house of parliament or have any office of trust, civil or military, or be capable of any grant of lands, &c. from the crown. Naturalization cannot be performed but by act of parliament; for by this an alien is put in exactly the same state as if he had been born in the king's ligeance."

(3) Grote in his History of Greece (iii. 182), speaking of Solon's regulations for the encouragement of trade, says:

"Nor ought we to pass over this early manifestation in Attica of an opinion equitable and tolerant towards sedentary industry, which in most other parts of Greece was regarded as comparatively dishonourable. The general tone of Grecian sentiment recognised no occupations as perfectly worthy of a free citizen, except arms, agriculture, and athletic and musical exercises; and the proceedings of the Spartans, who kept aloof even from agriculture, and left it to their Helots, were admired, though they could not be copied, throughout most part of the Hellenic world. Even minds like Plato, Aristotle, and Xenophon concurred to a considerable extent in this feeling, which they justified on the ground that the sedentary life and unceasing housework of the artisan was inconsistent with military aptitude. The town occupations are usually described by a word which carries with it contemptuous ideas, and, though recognised as indispensable to the existence of the city, are held suitable only for an inferior and semi-privileged order of citizens. This, the received sentiment among Greeks as well as foreigners, found a strong and growing opposition at Athens, corroborated also by a similar feeling at Corinth. The trade of Corinth, as well as of Chalcis in Eubœa, was extensive at a time when that of Athens had scarce any existence; but, while the despotism of Periander can hardly have failed to operate as a discouragement to industry at Corinth, the contemporaneous legislation of Solon provided for traders and artisans a new home at Athens, giving the first encouragement to that numerous town population both in the city and in the Piræus, which we find actually residing there in the succeeding century. The multiplication of these town residents, both citizens and metics, was a capital fact in the onward march of Athens, since it determined not merely the extension of her trade, but also the preeminence of her naval force, and thus, as a farther consequence, lent extraordinary vigour to her democratical government." [He

That their condition at Athens was on the whole pleasant and comfortable, is apparent from the numbers residing there: and that many of them grew rich and prosperous, is abundantly testified. The orators Lysias and Dinarchus prove by their examples, that fame as well as fortune might be won by an enterprising stranger. The father of Lysias was a Syracusan named Cephalus, who came to Athens at the invitation of Pericles. Lysias himself was born at Athens, and lived there for fifteen years, after which he went with a body of Athenian colonists to settle at Thurii in Italy. In that city he remained till the age of forty-seven, when he and many others were expelled by a Spartan party, which had got the upper hand since the defeat of the Athenians in Sicily. He then returned to Athens, where he dwelt for the remainder of his life, with the exception of a short absence during the reign of the Thirty. His life had nearly fallen a sacrifice to the rapacity of the tyrants, who for the purpose of extorting money accused him, together with divers others of his class, of disaffection to the government. His brother Polemarchus was put to death. He himself, having with difficulty escaped from prison, fled to Megara; and afterwards assisted Thrasybulus with a supply of arms and men. For this, when the democracy was restored, he obtained a grant of citizenship; which was afterwards declared void on account of an irregularity, because it had not been founded on a *Probouleuma*, or previous resolution of the Council. He retained however the rank of an Isoteles, and devoting himself for many years to the business of teaching rhetoric and composing speeches and pleadings, he realized a considerable fortune, and died at the age of eighty.

Dinarchus was born at Corinth, and having come to Athens in his youth, carried on the same lucrative practice that Lysias did, of a teacher and speech-writer. He left behind him a great number of orations, of which the most celebrated was composed for the prosecution of Demosthenes. This and two others are still extant.

He adds in a note, "The unbounded derision, however, which Aristophanes heaps upon Cleon as a tanner, and upon Hyperbolus as a lamp-maker, proves, that if any manufacturer engaged in politics, his party opponents found enough of the old sentiment remaining to turn it to good account against him."

See the remarks in Becker's Charicles. Transl. p. 341.

APPENDIX IV.

THE ARCHONS.

The word *Archon* signifies *ruler*. According to the Attic legend, after Codrus had bravely sacrificed his life for his country, the Athenians determined, in honour to his memory, that no one in future should bear the title of king. As Justin says:[1] "Post Codrum nemo Athenis regnavit; quod memoriæ nominis ejus tributum est." His successors were called Archons; and under that title they continued for about twelve generations to hold the chief magistracy for life. The office was then limited in duration to ten years: and some time afterwards the power of government passed from the regnant house into the hands of the Eupatridæ or Nobles; the office of Archon became annual, and was distributed among nine persons chosen from the noble families. It is only of these annual Archons that we know anything from authentic history. The name of the chief marked the year of his office, and was entered in all the registers and public documents to which a date had to be assigned. Hence he was called *Eponymus*. Of these we have a regular and unbroken series from the year B.C. 683.

Solon deprived the nobles of their exclusive title to this high magistracy, substituting a property qualification for one of birth. Under his law the Archons were chosen by the suffrages of the people from the first of the four classes, Pentacosiomedimni: they underwent a previous examination, to insure their fitness for office: and at the close of their official year they were accountable to the popular assembly. Further, in the first assembly of every Prytany an opportunity was afforded to the people of passing votes of approval or censure upon the conduct of the Archons, as well as other magistrates;[2] and those who had misbehaved themselves might be deposed. So things continued until after the battle of Platæa, when Aristides passed a law throwing open the office of Archon to all the citizens: and about the same time, or soon after,[3] another change was introduced in favour of the lower classes, viz. election by lot, instead of election by suffrage. The natural tendency of the last measure was to raise men of inferior ability to the post of Archons:

(1) Justin, ii. 7. Schömann, *de Comitiis*, Introd. vii.
(2) This was called ἐπιχειροτονία τῶν ἀρχῶν. See Schömann, *de Comitiis*, 143.
(3) See Grote's History of Greece, iv. 190, &c. Schömann (*de Comitiis*, 311) attributes this measure to Clisthenes.

but this was of less consequence at the time when the change took place; for, as we shall see, the importance of these functionaries had greatly diminished.

The Archons succeeded originally to the various powers—executive, priestly, and judicial—which had been vested in the kings. These at first were exercised by all in common; afterwards they were distributed among the nine: still the Archons, in one way or other, continued, down to the era of Solon's legislation, to engross the administrative duties of the state.[1] The reforms of Solon however, followed by those of Clisthenes, effected—not all at once, but in course of time, as the democratic principle gradually unfolded itself—a complete revolution: by which the power of the Archons was in some cases taken away, in others immensely abridged. Thus, a large portion of the executive administration, which had formerly belonged to them, was given to the Council of Five-hundred. The creation of the ten generals by Clisthenes virtually transferred to them the whole of the military command, which Solon had left with the Polemarch. And the judicial authority of the Archons, which was anciently absolute and supreme, became ancillary only to that of the Heliastic tribunal or jury, taken from the body of the people.[2] In short, during the flourishing days of the republic, the Archons held places of dignity rather than power; and most of their duties were matter of routine. The following account of them has reference to this period.

THE CHIEF ARCHON:

The first or chief of the nine in point of dignity is called *the Archon* always by ancient writers; while the grammarians call him the Archon Eponymus. He had jurisdiction over all questions arising out of family relations, such as those of husband to wife, parent to child, &c., and was bound specially to guard the interests of those members of the family who needed protection, for example, widows, orphans, heiresses. He had cognizance of suits for divorce, alimony, and dower; complaints for ill-treatment of parents by children, or women by their husbands, frauds committed by guardians on their wards; writs of lunacy; indictments for idleness or waste of patrimony.[3]

Questions concerning inheritances came before him. It was his

(1) Thucydides, i. 126, speaking of the time of Cylon's conspiracy, says: *τότε δὲ τὰ πολλὰ τῶν πολιτικῶν οἱ ἐννέα ἄρχοντες ἔπρασσον.* Schömann. *de Comitiis*, 141.

(2) This is the real meaning of Plutarch's statement, (Vit. Sol. 18) that Solon gave an appeal from the Archon to the people. When the jury-courts were established, the causes were carried to them for final hearing. The Archon gave his opinion on the case, when it was brought before him; but the parties generally insisted upon having a trial by jury, and it became dangerous for the Archon to refuse it. (See Appendix IX. Grote's History of Greece, iii. 172. Meier & Schömann, Att. Proc. Einleit. 13.)

(3) The legal names of these suits or proceedings were *ἀπολείψεως, ἀποπέμψεως, σίτου, προικός, κακώσεως γονέων, κακώσεως γυναικῶν,* &c. *ἐπιτροπῆς, παρανοίας, ἀργίας, κατεδηδοκέναι τὰ πατρῷα.*

business, on receiving a claim to the estate of a deceased person, to make proclamation of it in the next regular assembly, so that, if there were any more claimants, they might come before him within a given time: and when the title was contested, he put the case in a proper train for legal decision. He sat in his office (which was in the market-place by the statues of the ten heroes) every month of the year except the last, to receive the applications of suitors.[1]

When a daughter became the representative of her deceased father's house, the nearest male relative had a right to claim her in marriage, and it was the Archon's business to assign her to the proper person. If the right to her hand were disputed (as in the case of a rich heiress was not uncommon), he brought the question to trial. If she were poor, he had to see that the next of kin either married her or gave her a suitable portion.[2]

If a contest arose respecting a slave—whether he was or was not entitled to be free—the proceedings were taken before the Archon, on the one hand to assert his freedom, or on the other, to restore him to his master.[3]

The Archon superintended the election of the generals and military officers.[4] He presided also at the celebration of the Great Dionysia and the Thargelia. If a dramatic author required a chorus, the Archon assigned him one. He heard the disputes between the different choirmasters, whether on the subject of their liability to serve the office, or on matters concerning the performance. Meier and Schömann think, that he brought into court those cases of *Probole,* which arose out of the festivals which he presided over.[5]

The reader will here bear in mind, though I shall more fully explain it in Appendix X., that in all the above-mentioned cases where the Archon had a jurisdiction, (and the same remark applies to his colleagues,) he was the directing and presiding magistrate rather than the judge. He received the complaint, heard the parties in the first instance, prepared the case for trial, and in due time (if it was not otherwise settled) brought it for trial before a jury-court. The jury was the tribunal which ultimately decided every question both of law and fact, and awarded the damages or the punishment. The powers of the Archon related to matters of form, and practically did not extend beyond the imposition of a small fine.[6]

(1) See all this fully explained by me under title *Heres* in the Archæological Dictionary.

(2) See title Ἐπίκληρος in the Archæological Dictionary. The daughter, who was left without brothers, was equally called ἐπίκληρος, or *heiress*, whether she had an estate or not. She was heiress to all the heritable rights of her father, and prevented his family becoming extinct.

(3) Ibid. title Ἐξαιρέσεως δίκη.

(4) Schömann, *de Comitiis*, pp. 141, 326.

(5) Meier & Schömann, *Att. Proc.* p. 276. Schömann, *de Comitiis*, 239.

(6) A full account of his jurisdiction is given in Meier & Schömann, *Att. Proc* pp. 41, 286, 393 &c.

THE KING-ARCHON.

The second of the Archons received this name, because the religious part of the kingly office was preserved mainly in his person; and therefore he presided over some of the most ancient and solemn festivals, as the Lenæa, the Eleusinian mysteries, the Lampadephoria. His wife was called queen, and, as she had to officiate at some important sacrifices, she was required to be of pure Attic blood like himself, and married a virgin.[1] He exercised jurisdiction over all cases of murder and homicide; (for by them the city was polluted, and he, as guardian of religion, had to see that the pollution was duly expiated:) likewise cases of malicious wounding or attempt to murder, poisoning, procuring of abortion, and arson.[2] All these he brought before the Areopagus or such other court as was appointed to try them. For a like reason he had cognizance of all charges of impiety, and of disputes between different persons or families concerning the right to any priesthood or the privileges belonging to it.

The term *impiety* at Athens embraced a wide range of crime, and as the law was not capable of very exact definition, it was sometimes made the vehicle of unjust persecution, as we know to have been the case in modern times. Among the offences comprised under this title were atheism and blasphemy, sacrilege, profanation of temples or sacred property, neglect of prescribed ceremonials, divulgation of mysteries. The charge against Socrates was—"that he did not believe in the gods of his country, that he introduced the worship of new divinities, and that he corrupted young men." The speech of Andocides on the Mysteries is his own defence to a charge of having profaned the mysteries of Eleusis. We have a speech of Lysias in defence of a man accused of digging up a sacred olive-tree.[3] Aristotle was accused of impiety, in having composed a hymn in honour of his friend Hermias and paid him divine honours. Doubtful of the result, he fled from Athens, and said, in allusion to the fate of Socrates, that he would not give the Athenians an opportunity of sinning a second time against philosophy.

The office of the King-Archon was in the King's Porch.[4]

THE POLEMARCH.

He, as his name imports, was once commander-in-chief of the army. When the ten generals were created, the right of joint command was reserved to him; and in councils of war he had an equal voice with all the ten; but this was soon changed, and his vote came to be counted only for one. At Marathon the Polemarch Callimachus

(1) See especially Demosthenes, contr. Neær. 1570, and Lysias contr. Andoc. 103.

(2) These cases were entitled, τραύματος ἐκ προνοίας, βουλεύσεως, φαρμάκων or φαρμακείας, ἀμβλώσεως, πυρκαϊᾶς.

(3) The Oration περὶ τοῦ σήκου.

(4) See Meier & Schömann, *Att Proc.* pp 47. 300 471.

voted for battle with Miltiades, and commanded the right wing of the army.[1] But this was about the last occasion of any Polemarch appearing at the head of the troops. He ceased from this time to have any duties connected with war, except the superintendence of some funeral games in honour of the slain: he became in short a purely civil magistrate, his office being to overlook and protect the aliens resident in the city. Even here indeed we trace the memory of his ancient functions: for in early times, both among the Greeks and the Romans, stranger and enemy were described by the same name: *hostis* (says Cicero)[2] *apud majores nostros is dicebatur quem nunc peregrinum dicimus.* In the advance of civilization, when strangers came to be regarded with more humanity, and their rights to be recognised by law, it was not surprising that they should be placed under the care of a minister of war.

The civil duties of the Polemarch have been compared to those of the Prætor Peregrinus at Rome. He had the same jurisdiction over the family rights of resident aliens, which the chief Archon exercised over citizens. He received complaints against them for acting without a patron; and those preferred against freedmen for neglect of duty to their former masters.[3] In criminal proceedings against an alien, which did not concern his personal status or his family rights, the jurisdiction depended on the subject-matter of the charge. Private suits, in which an alien was defendant, were (with a very few exceptions) heard before the Polemarch.

He had an office in the Lyceum.[4]

THE ASSESSORS.

Each of the three superior Archons nominated two Assessors (*Paredri*), who assisted him with their counsel, and occasionally acted as his deputies. Although removable by the person who appointed them, the Assessors were themselves considered to hold magisterial rank: they underwent an examination by the Council before their appointment was ratified, and were liable at the end of the year to render an account.[5]

THE THESMOTHETÆ OR JUDGES.

The remaining six Archons, who bore this title, acted together as a board, and had an extensive department of judicial duty assigned to them. Hence indeed they received their name, which signifies "makers of laws or ordinances:" a name by no means inappropriate in ancient times, when the Archons heard and decided the causes brought before them, without having codes or precedents to control their judgment. Under such circumstances the person who decides

(1) Herodotus, vi. 109, 111.
(2) Cicero, *de Officiis*, i. 12. The Lacedæmonians called the Persians ξένοι, Herodotus ix. 11. Buttmann suggests that the word ἐχθρὸς is derived from ἐκ.
(3) See the last Appendix.
(4) Meier & Schömann, *Att. Proc.* pp. 50, 215, 473.
(5) Meier & Schömann *Att. Proc.* p. 57.

the case in effect makes the law, and the judge and legislator are one. Grote[1] observes, that strictly all the nine archons were equally entitled to the name of Thesmothetæ. Doubtless it was given to the last six, because their jurisdiction was more extensive.

Thus it appears, that no better translation could be found for Thesmothetæ, than that of *Judges*, which I have chosen. True it is, that other magistrates besides them superintended courts of justice. But the same objection might be made to the application of the term *Judges* in our own language; since, besides those who receive that special designation, there are a multitude of commissioners, recorders, magistrates, and others, who perform judicial duties.

All judicial power having anciently been vested in the nine Archons, the Thesmothetæ then had cognizance of all matters which were not specially appropriated to the other three. In later times portions of their jurisdiction were transferred to other functionaries, who either were newly elected, or received an accession of authority; as the Logistæ or Auditors, the Generals, the Eleven, the Forty, and others. Still a very ample jurisdiction was left for these the Judges properly so called; being, as Meier says, the remainder of all possible jurisdiction, after subtracting what was specially given to other magistrates. Among the various matters of which, either from ancient authors or the testimony of grammarians, we know the Thesmothetæ to have had cognizance, are the following—Charges against magistrates on their probation[2]: informations for offences against the mine-laws:[3] most cases of *Probole:* appeals against townships for ejecting members;[4] indictments for pettifogging practices,[5] for false entries of debtors in the public register,[6] or false swearing to prove a summons:[7] charges of theft, bribery, adultery, and personal outrage.[8]—Also a great variety of civil actions; as those for the recovery

(1) Grote's History of Greece, iii. p. 99.

"According to the proper sense of the word *Thesmothetæ*, all the nine Archons were entitled to be so called, though the first three had especial designations of their own: the word *Thesmoi* (analogous to the *Themistes* of Homer) includes in its meaning both general laws and particular sentences—the two ideas not being yet discriminated, and the general law being conceived only in its application to some particular case. Draco was the first Thesmothet who was called upon to set down his Thesmoi in writing, and thus to invest them essentially with a character of more or less generality."

In a note he adds:

"Both Aristotle (Polit. ii. 9. 9.) and Demosthenes (contr. Everg. et Mnesibul. p. 1161) call the ordinances of Draco *νόμοι*, not *θεσμοί*. Andocides distinguishes the *θεσμοὶ* of Draco and the *νόμοι* of Solon. (De Mysteriis, p. 11.) This is the adoption of a phrase comparatively modern; Solon called his own laws *θεσμοί*. The oath of the *περίπολοι ἔφηβοι* (the youth who formed the armed police of Attica during the first two years of their military age), as given in Pollux (viii. 106), seems to contain at least many ancient phrases: this phrase, *καὶ τοῖς θεσμοῖς τοῖς ἱδρυμένοις πείσομαι*, is remarkable, as it indicates the ancient association of religious sanction which adhered to the word *θεσμοί*; for *ἱδρύεσθαι* is the word employed with reference to the establishment and domiciliation of the gods who protected the country: *θέσθαι νόμους* is the later expression for making laws."

(2) *δοκιμασίας.* (3) *φάσεις.* (4) *ἐφέσεις.*

(5) *συκοφαντίας.* (6) *ψευδεγγραφῆς.* (7) *ψευδοκλητείας.*

(8) *Κλοπῆς, δώρων, μοιχείας, ὕβρεως.*

of land, houses, and mesne profits:[1] actions for debt, deposit, breach of contract, abusive language, damage or tort-feasance:[2] further, all those which were described by the generic titles of mining causes, mercantile causes, and club causes.[3] Treaties with foreign states, arranging terms for the reciprocal administration of justice, were settled by a court under the direction of the Thesmothetæ; and causes tried at Athens under such arrangement belonged to their jurisdiction.[4]

Connected with their character, as judges or ministers of the law, was the duty, which we have seen was imposed on them, of annually revising the whole body of statutes, and making a report thereon to the people.[5] It was their business likewise to select the juries for the different law-courts, and impanel them for trial. If Ulpian is to be credited, they acted in some measure as conservators of the peace, walking in the streets at night to prevent robbery.[6]

They had an office called Thesmothesium in the market-place, attached very likely to the Prytaneum.[7]

There were two cases in which all the nine Archons had jurisdiction in common: first, in the prosecution of deposed magistrates; secondly, upon indictments for passing illegal measures.[8]

The Archons were always regarded as being, in point of honour and dignity, the chief magistrates of the state. They, as we have seen, were exempted from the trierarchy; a privilege which no other persons enjoyed by virtue of their station. While engaged in official duty, they wore crowns of myrtle; and for any one to strike or insult them at such a time was, as we learn from Demosthenes, a high misdemeanor. At the end of the year, if their duties had been properly discharged, they became members of the Areopagus.[9]

APPENDIX V.

HARMODIUS AND ARISTOGITON.

THESE tyrannicides, so famous in history and in song, Shilleto[1] entitles "miscalled patriots and worthless men." And undoubtedly, if tried by the standard of Christian morality, the very attachment which has rendered their names immortal, by associating them with the restoration of Athenian liberty, would in our estimation serve only to degrade them. Their merits however are not to be tried by such a

(1) Χωρίου, οἰκίας, ἐνοικίου. But where the proceeding was to recover the inheritance of a deceased person, the Archon had cognizance.
(2) Χρέους, ἀργυρίου, συμβολαίων παραβάσεως, κακηγορίας, βλάβης.
(3) Δίκαι μεταλλικαί, ἐμπορικαί, ἐρανικαί.
(4) Σύμβολα, and δίκαι ἀπὸ συμβόλων.
(5) Vol. II. Appendix VII. (6) Ante, p. 78.
(7) Meier & Schömann, *Att. Proc.* pp. 59, 319, 474, 773.
(8) Schömann, *de Comitiis*, 232. Meier & Schömann, *Att. Proc.* 40, 282.
(9) Ante, pp. 12, 70, 75, 76. Vol. II. Appendix III.
(10) In his edition of the Speech on the Embassy, p. 431.

standard: whoever would judge them fairly, must throw himself as well as he can into the feelings of an ancient Athenian. It must not be forgotten that practices which the laws of Solon condemned were tolerated by the loose morals of the day: and even had this not been so, the Athenians would have forgiven much to the memory of men, whom they regarded as their deliverers from an odious tyranny. Odious I say: for though, at the time when the two friends raised their steel against Hipparchus, neither that prince nor his brother had behaved oppressively to the great body of the people, yet they were in a position which enabled them to exercise what oppression they pleased; and the very circumstances which led to the conspiracy against them forcibly illustrated the danger of conceding to any man a power above the laws. The words uttered two centuries after by Hyperides, "we don't want a mild despot," express what in the breast of an ancient Athenian was a deep sentiment of patriotism. The tyrant or despot, however virtuous or humane he might be in his private character, was still a man of lawless power and arbitrary will, who could slay, imprison, or outrage any one he chose with impunity. The only sure protection for life and property, for all that a freeman held dear to him, was to live in a republic under equal laws. So thought, so felt a good citizen of Athens from the days of Solon to those of Demosthenes.

Hippias, the eldest of the sons of Pisistratus, succeeded to his father in the year B.C. 527. He was assisted in the government by his brother Hipparchus; their administration was mild and equitable, and even in accordance with the pre-established laws and institutions of Athens, so far as was consistent with the maintenance of their own authority. Hipparchus inherited the literary tastes of his father, and was on intimate terms with the great poets of the day, Simonides and Anacreon, the latter of whom he induced to visit Athens. The author of the Platonic dialogue which bears his name commends Hipparchus in exaggerated terms for his wisdom and virtue. He was at least inspired with the ambition of being thought a moralist, and he distributed about the city and public roads busts of Hermes, which, while they answered a similar purpose to our milestones, arrested the eye of the passenger with pithy and laconic apophthegms in verse, such as, "Do not deceive your friend," "Persevere in affection to justice;" and the like. Yet with all his affectation of morality he was not the less addicted to sensual and unlawful pleasures. He cast his eye upon Harmodius, a beautiful Athenian youth, and affronted him with solicitations, which were indignantly repelled. In revenge for this disdain, he put a public insult upon the sister of the youth, summoning her to attend a religious procession as one of the Canephoræ or basket-carriers, and, when she presented herself, disavowing the summons, and scornfully rejecting her as a person utterly unworthy of such an office. Meanwhile Harmodius had informed his friend Aristogiton of the overtures

which had been made to him, and excited in him a mingled feeling of rage and fear; which was greatly increased when he heard of the insult offered to the maiden. The two friends resolved upon revenge, and extending their views beyond the mere satisfaction of personal injury, concerted a plan, which they entrusted to a few select associates, for killing both the brothers and putting an end to the despotism. At the Panathenæan festival it was customary for the citizens to march in arms to the Acropolis: this time, when their appearance in arms would excite no suspicion, the conspirators selected for their attempt. Harmodius and Aristogiton were provided not only with spear and shield like the rest of the citizens, but also with daggers concealed under the sacred myrtle boughs, which were among the insignia of the procession. Their intention was first to assail the elder tyrant. Advancing to the Ceramicus, where Hippias was directing the order of the ceremonial, they perceived him conversing familiarly with one of their own partisans, and conjectured from his manner that their plot was betrayed. In the confusion of the moment they renounced their attempt upon Hippias, but resolving at all events to have their revenge, they hastened back to the city, and meeting with Hipparchus, rushed upon him and slew him. Harmodius himself was killed on the spot by the guards: Aristogiton, escaping for the moment, was afterwards seized and suffered a cruel death under the torture.[1] The news of his brother's death was speedily carried to Hippias, who took the promptest means to crush the conspiracy before it had time to spread among the crowd. Hastening to the spot where the citizens were assembled for procession, with a calm demeanour, as if nothing had happened, he ordered them to drop their arms and file off to another place which he pointed out. His command being obeyed, the arms were seized by his guards, and Hippias, arresting all on whose persons any concealed weapons were found, or whom he had any other cause to distrust, secured himself against further danger.

Such was the immediate termination of this famous conspiracy, which happened in the thirteenth year of the reign of Hippias. That prince, exasperated by the attempt which had been made against him, from this time entirely changed his system of government, and from a mild and humane despot became a jealous and cruel one. He reigned four years longer, until the Alcmæonidæ with Spartan aid expelled him from Athens. The Athenian people, established in a free commonwealth, regarded Harmodius and Aristogiton as their deliverers; erected statues of them in the Agora,[2] and granted those honours to their memory, and those immunities to their descendants, of which so much is said in the Orations

(1) Thucydides, vi. 58. The words οὐ ῥᾳδίως διετέθη, ambiguous perhaps in themselves, are explained by later writers, who distinctly mention the torture. See Thirlwall's History of Greece, vol. ii. 69. Grote, vol. iv. 152.

(2) As to its position, see Wordsworth's Athens and Attica, p. 108.

of Demosthenes, and in the Leptinea especially. In one sense undoubtedly they were the liberators of Athens: for, though their attempt failed, it drove Hippias into those measures which rendered him universally odious, and produced the combination for his downfall. But the popular belief went even beyond this; for in the course of some years after the event, as we are assured by Thucydides,[1] it had become a received tradition among the Athenian people, that Hipparchus, not Hippias, was the elder brother, and that the dagger which ended his life at the same time put an end to the dynasty of his family. The story was taken up by the poets, and is embodied in the famous Scolium or drinking-song of Callistratus, written about a century after the event, which distinctly asserts that Harmodius and Aristogiton "killed the tyrant Hipparchus," and that they "gave equal laws to Athens."

Of this song there have appeared divers translations, the best of which are collected and reviewed in Blackwood's Magazine, Vol. 33, p. 884. The Reviewer gives one written by himself, under the assumed name of Christopher North. I subjoin these, together with an attempt of my own. The original, which is preserved in Athenæus xv. 695, is set forth in the note.[2]

CHRISTOPHER NORTH.

Like Harmodius and Aristogiton,
The myrtle-wreathed sword
I'll bear—when Athens' lord they slew,
And equal laws restored.

(1) Thucydides, vi. 55. It is stated by the Scholiast, and may in some measure be inferred from the words of the historian himself, that he was related to the family of Pisistratus. His account of these events is verified by Herodotus, v. 55, &c. vi. 123.

(2) THE SCOLIUM OF CALLISTRATUS.

'Εν μύρτου κλαδὶ τὸ ξίφος φορήσω,
Ὥσπερ Ἁρμόδιος κ' Ἀριστογείτων,
Ὅτε τόν τύραννον κτανέτην,
Ἰσονόμους τ' Ἀθήνας ἐποιησάτην.

Φίλταθ' Ἁρμόδι', ὄυ τι που τέθνηκας,
Νήσοις δ' ἐν μακάρων σε φασὶν εἶναι,
Ἵνα περ πυδώκης Ἀχιλεὺς,
Τυδείδην τε φασὶν Διομήδεα.

'Εν μύρτου κλαδὶ τὸ ξίφος φορήσω,
Ὥσπερ Ἁρμόδιος κ' Ἀριστογείτων,
Ὅτ' Ἀθηναίης ἐν θυσίαις
Ἄνδρα τύραννον Ἵπαρχον ἐκαινετην.

Αεὶ σφῶν κλέος ἔσσεται κατ' αἶαν
Φίλταθ' Ἁρμόδιε κ' Ἀριστόγειτον,
Ὅτι τὸν τύραννον κτάνετον
Ἰσονόμους τ' Ἀθήνας ἐποιήσατον.

A distich of Simonides, published in the first volume of Gaisford's Poetæ Minores Græci, is remarkable for the artifice by which the poet contrives to get Aristogiton's name into Elegiac verse:

Ἦ μέγ' Ἀθηναίοισι φόως γένεθ' ἡνίκ' Ἀριστο—
γείτων Ἵππαρχον κτεῖνε καὶ Ἁρμόδιος.

Harmodius dear! thou art not dead.
In the islands of the blest
Thou art, where swift Achilles
And Tydides Diomed rest.

Like Harmodius and Aristogiton,
With myrtle I'll entwine
The sword,—when they Harmodius slew
Before Minerva's shrine.

For ever, over all the earth,
Their names shall be adored,
The men who Athens' tyrant slew,
And equal laws restored.

CUMBERLAND.

He is not dead, our best beloved
Harmodius is not lost,
But with Troy's conquerors removed
To some more happy coast.

Bind then the myrtle's mystic bough,
And wave your swords around,
For so they struck the tyrant low,
And so their swords were bound.

Perpetual object of our love
The patriot pair shall be,
Who in Minerva's sacred grove
Struck and set Athens free.

DENMAN.

I'll wreathe my sword in myrtle bough,
The sword that laid the tyrant low,
When patriots, burning to be free,
To Athens gave equality.

Harmodius hail! though 'reft of breath,
Thou ne'er shall feel the stroke of death,
The heroes' happy isles shall be
The bright abode allotted thee.

I'll wreathe my sword in myrtle bough,
The sword that laid Hipparchus low,
When at Minerva's adverse fane
He knelt and never rose again.

While freedom's name is understood,
You shall delight the wise and good;
You dared to set your country free,
And gave her laws equality.

ANOTHER BY DENMAN.

In myrtle my sword will I wreathe,
  Like our patriots the noble and brave,
Who devoted the tyrant to death,
  And to Athens equality gave.

Loved Harmodius, thou never shalt die!
  The poets exultingly tell,
That thine is the fullness of joy,
  Where Achilles and Diomed dwell.

In myrtle my sword will I wreathe,
  Like our patriots the noble and brave;
Who devoted Hipparchus to death,
  And buried his pride in the grave.

At the altar the tyrant they seized,
  While Minerva he vainly implored,
And the Goddess of Wisdom was pleased
  With the victim of liberty's sword.

May your bliss be immortal on high,
  Among men as your glory shall be!
Ye doom'd the usurper to die,
  And bade our dear country be free.

ELTON.

In myrtles veil'd will I the falchion wear,
  For thus the patriot sword
Harmodius and Aristogiton bare,
  When they the tyrant's bosom gored,
And bade the men of Athens be
Regenerate in equality.

Oh! beloved Harmodius! never
Shall death be thine, who liv'st for ever.
Thy shade, as men have told, inherits
The islands of the blessed spirits,
Where deathless live the glorious dead.
Achilles fleet of foot, and Diomed.

In myrtles veil'd will I the falchion wear,
  For thus the patriot sword
Harmodius and Aristogiton bare.
  When they the tyrant's bosom gored;
When in Minerva's festal rite
They closed Hipparchus' eyes in night.

Harmodius' praise, Aristogiton's name,
Shall bloom on earth with undecaying fame;
Who with the myrtle-wreathed sword
The tyrant's bosom gored,
And bade the men of Athens be
Regenerate in equality.

SANDFORD.

Wreathed with myrtles be my glaive,
Like the falchion of the brave,
Death to Athens' lord that gave,
Death to tyranny!

Yes! let myrtle-wreaths be round,
Such as then the falchion bound,
When with deeds the feast was crown'd,
Done for liberty!

Voiced by Fame eternally,
Noble pair, your names shall be,
For the stroke that made us free,
When the tyrant fell.

Death, Harmodius! comes not near thee,
Isles of bliss and brightness cheer thee,
There heroic hearts revere thee,
There the mighty dwell!

Here follows the Reviewer's commentary:—

"Lowth, in his Sacred Poetry of the Hebrews, speaks enthusiastically of this song, saying, that it was not to be wondered at that no one should have dared to attempt to restore the tyranny of the Pisistratidæ in Athens, where at all festive meetings, even among the lowest of the people, was daily chanted—'Scolium Callistrati nescio cujus, sed ingeniosi certe poetæ, et valde boni civis;' and, alluding to the domination of Cæsar, he says that, had such a patriotic song been familiar in the mouths of the inhabitants of the Suburra, 'Plus Mehercule valuisset unum Harmodii melos quam Ciceronis Philippicæ omnes.' Is not that extravagant? It is spirit-reviving to sing aloud

Old songs that are the music of the heart;

and we have all heard of that saying of Fletcher of Saltoun—'Let others make the laws, give me the making of the songs of a country.' But the power of the Pisistratidæ was not palsied merely, it was dead and buried beyond all possibility of resurrection, long before the singing of this famous Scolium. The elder Callistratus flourished about a century after the assassination of Hipparchus; the younger half a century later; and the youngest—for there are three spoken of—about a hundred and fifty years only before the Christian era.

"The song is a fine one, and was very popular—national; it struck forcibly a single key that vibrated to the core of the people's heart. Chanted by a manly voice, with accompaniment of suitable action, and the singer like a hero at some festal entertainment, where all the guests were full of wine and patriotism, the effect must have been magnificent, and at its close sublime the muttered thunder of—'Death to all tyrants.' But on most occasions a little poetry will suffice to rouse the imagination of a great assemblage to heights of noblest daring; and there is but little poetry in this famous strain. It is of a higher mood doubtless than our own King's Anthem; yet we remember the time when loyalty was with us a national virtue and a national passion, and when the voices of many hundreds of as noble men as ever sat at an Athenian feast often shook the theatre in a transport at these three no very august lines—

Send him victorious,
Happy and glorious,
Long to reign over us,
God save the King!

"But let us take a critical glance at the translations. Our own is a mere attempt to versify the original literally; and while we give it as an example of the style in which the song should be translated, we admit that it is poorly done, and nearly an entire failure. Cumberland's is spirited, and it will be noticed that he supposes the song to consist of but three stanzas. Denman's versions are both good; but faulty as well in particular lines as in the general conception. Thus, the second line of the first version, 'The sword that laid the tyrant low,' is incorrect; that is asking the spectators and auditors to believe too much, at least more than Callistratus. The second line of the second stanza is utter nonsense; 'Thou ne'er shalt feel the stroke of death.' Harmodius was killed on the spot. The song says, 'Thou art not dead;' nor was he, for he was in the Islands of the Blest—but he had felt the stroke of death. The spirit of the two following lines is destroyed by the use of the future tense—'The heroes' happy isles shall be.' They *were*—σε φασιν εἶναι—and so believed all who lived under Minerva. 'While Freedom's name is understood,' is poor, in comparison with ἀεὶ κατ' αἶαν, and the song was not addressed formally to the 'wise and good,' of whom there is no mention, because no thought, but to all who had ears to hear the names of the deliverers. In the second version line second, 'noble and brave,' is but so so; 'the poets exultingly tell' is insufferable; 'buried his pride in the grave' is vastly fine: all that about Minerva is good in itself, but lugged in ad libitum; and 'may your bliss be immortal on high' is a sad slip in a classical scholar. Yet, as a paraphrase, the composition is certainly above mediocrity, and may be read at any time with pleasure, at times with delight. Sandford's is free from such faults, and is a fine—a noble version. But does

not the power of the Greek song dwell in the names and in the proud repetition—the loving iteration—of the names of the destroyers? They are in every stanza—the lines they fill are the words of the spell. Drop them, and the charm is broken—the singer absurd with his myrtle and sword. You might just as well in translating into another language—

> Scots wha hae wi' Wallace bled,
> Scots wham Bruce has aften led,

omit Wallace and Bruce, and give us 'the noble and brave.' Elton felt that; and therefore his version has not only bones, which the others have, and soul, which they have too, but the soul of the poet and the patriot, as it is flung into his exulting and threatening song of vengeance, triumph and restoration. For that, and for its general flow and glow, we pronounce Elton's version, which is free but not paraphrastic, by far the best."

To some part of this criticism I assent, but not to all. I agree that Sandford's is a noble paraphrase. Denman's versions have not very much to recommend them. Elton's is undoubtedly the best: its fault is, that it is somewhat too stately both in style and versification. The simplicity, the easy flow and song-like character of the verses should be preserved in the translation, if possible. I present my own attempt with diffidence:—

> With myrtle I shade my falchion-blade
> Like Aristogiton of old
> And his patriot comrade bold,
> When they made the tyrant bleed
> And Athens from thraldom freed.
>
> Harmodius, our pride, thou hast not died!
> In the islands of the blest
> In eternal peace and rest
> With Achilles and Tydeus' son
> Thou dwellest, beloved one!
>
> With myrtle I shade my falchion-blade
> Like Aristogiton of old
> And his patriot comrade bold,
> When Athene's day beheld
> How the tyrant's might they quell'd.
>
> Harmodius, lays of your country's praise
> For a crown of glory shall be
> To Aristogiton and thee;
> For ye made the tyrant bleed
> And Athens from thraldom freed.

Last I shall present to the reader Sir William Jones' Ode in imitation of Callistratus. The reviewer calls it a long leaf of tinsel. I

certainly don't admire the first line; yet (on the whole) there is as much spirit about it as in most of the above translations.

SIR WILLIAM JONES.

Verdant myrtle's branchy pride
Shall my biting falchion wreathe:
Soon shall grace each manly side
Tubes that speak, and points that breathe.
Thus, Harmodius, shone thy blade;
Thus, Aristogiton, thine:
Whose, when Britain sighs for aid,
Whose shall now delay to shine?
Dearest youths, in islands blest,
Not, like recreant idlers, dead,
You with fleet Pelides rest,
And with godlike Diomed.
Verdant myrtle's branchy pride
Shall my thirsty blade entwine;
Such, Harmodius, deck'd thy side;
Such, Aristogiton, thine.
They the base Hipparchus slew
At the feast of Pallas crown'd:
Gods! how swift their poniards flew!
How the monster tinged the ground!
Then in Athens all was peace,
Equal laws and liberty;
Nurse of arts and age of Greece!

APPENDIX VI.

ATHENIAN FESTIVALS.

XENOPHON in his treatise on the Athenian republic (iii. 8) says that there were twice as many festivals at Athens as in any other city of Greece. And not only in the number of festivals, but in their costliness and splendour they greatly surpassed all their neighbours. Were the Athenians more pious than the rest of the Greeks? were they more deeply impressed with a sense of religious duties? This was their boast, and there may have been much truth in it.[1] But piety was not the only reason which induced them to worship the gods with greater solemnity than others. Love of

(1) Josephus (contra Apionem, ii 11,) says that the Lacedæmonians were the bravest of the Greeks, and the Athenians the most pious. That the Athenians themselves should make it their boast, is not surprising. Thus, Lycurgus cont. Leocrat. 149. Πλεῖστον διαφέρετε τῶν ἄλλων ἀνθρώπων τῷ τε πρὸς τοὺς Θεοὺς εὐσεβῶς καὶ πρὸς τοὺς γονεῖς ὁσίως καὶ πρὸς τὴν πατρίδα φιλοτίμως ἔχειν.

feasting and amusement had certainly quite as much to do with the matter. Of those magnificent sacrifices provided at the public cost for Zeus, Athene, Artemis, and other of the tenants of Olympus, the Athenian multitude partook more largely than did the divinities themselves: and if a hecatomb was immolated to the Father of the Gods, a considerable number of poor citizens, who never tasted meat at their ordinary meals, were sumptuously regaled without spending an obol of their own money.[1] When we consider too the intense delight which they took in the shows, games, processions, and dramatic exhibitions, the cost of all which was defrayed partly out of the public purse, and partly by a few wealthy individuals, can we wonder that the grand festivals, on which these amusements were provided gratis for the people, were regarded by them as the brightest days in the calendar? Böckh observes, that the celebration of these festivals in the best times of the Athenian republic created a profuseness of expenditure not inferior to that of the most luxurious princes. That there was a mixture of good and evil in it, cannot be doubted. The dramatic and musical contests were calculated to refine and to elevate the national mind; while, on the other hand, the too frequent recurrence of public amusements and the dissolute character of many of them had a tendency to demoralise and enervate. We have seen how Demosthenes[2] reproves his countrymen for their devotion to spectacles and sacrifices; how he complains not only of the spirit of idleness which they engendered, but of the loss occasioned to the revenue. Plutarch[3] in his Essay on the Glory of Athens, while he dilates on the grandeur of her theatrical entertainments, relates the opinion expressed by a Lacedæmonian upon the subject—namely—"that the Athenians made serious matters of trifles and lavished on the theatre sums sufficient for the equipment of large fleets and the maintenance of great armies: that, if it were calculated what each play cost them, it would be found they had spent more treasure upon Bacchæs and Phænissæs and Antigones and the woes of Medea and Electra, than upon wars waged for empire and deliverance from the barbarians."

The following is a list of the principal Athenian festivals which are known to us. We must bear in mind that, besides all these religious

(1) At the thanksgiving for the battle of Marathon, five hundred kids were sacrificed to Artemis Agrotera: to which Aristophanes jestingly alludes, when he makes the sausage-seller propose to sacrifice a thousand, if sprats should become cheap, (Equites 660.)

> Τῇ δ' Ἀγροτέρᾳ κατὰ χιλίων παρῄνεσα
> εὐχὴν ποιήσασθαι χιμάρων εἰσαύριον,
> αἱ τριχίδες εἰ γενοίαθ' ἑκατὸν τοὐβολοῦ.

This was an extraordinary number: but hecatombs were not uncommon, and each on an average cost a talent. Böckh says we may judge of the number of the great sacrifices at Athens from the fact, that the money received for skins in the third year of the hundred and eleventh Olympiad was more than five thousand drachms for seven months. (Public Economy of Athens, Translation, p. 283.)

(2) See particularly the third Olynthiac, this Translation, vol. i. p. 59: and the first Philippic, ibid. p. 69.

(3) Cited by Böckh, ibid. p. 280.

celebrations at home, there were the Theoriæ, or festal missions to Delos and other places, and those to the great games of Greece, which were conducted generally with all due pomp and magnificence.

Adonia.	Heræa.
Aglauria.	Heraclea.
Anacea.	Hephæstea.
Androgeonia.	Lenæa.
Anthesteria.	Metageitnia.
Apaturia.	Mæmacteria.
Arrephoria.	Munychia.
Asclepiea.	Olympia.
Bendidea.	Oschophoria.
Boedromia.	Panathenæa.
Brauronia.	Pandia.
Chloea.	Pandrosia.
Chronia.	Panis festum.
Cotyttia.	Plynteria.
Delphinia.	Posidonia.
Diasia.	Proerosia.
Diipolia.	Promethea.
Dionysia.	Pyanepsia.
Eleusinia.	Synœcia.
Eleutheria.	Thargelia.
Haloa.	Thesmophoria.
Hermæa.	Thesea.

A brief explanation will be given of these, following the alphabetical order for the sake of convenience.

ADONIA.

The feast of Adonis, celebrated by women only, in the month Munychion. It lasted for two days. The first was a day of mourning, when they brought images into the streets, representing the corpse of Adonis, and uttered the cries and lamentations customary at funerals. The second was a day of rejoicing for the supposed restoration of Adonis to life at the entreaty of Venus. The mourning for Adonis occurring on the eve of the Sicilian expedition was considered an unlucky omen, as we are informed by Plutarch.[1]

These rites, founded on the tale so familiar to all, were brought into Greece from Syria or Egypt.[2] Adonis was the Syrian Thammuz, whose worship found its way even to Jerusalem, as we know from the prophet Ezekiel, (viii. 14.) "Then he brought me to the door of the gate of the Lord's house which was towards the north; and behold,

(1) Plutarch, Vit. Alcib. 18. Aristophanes alludes to the same thing in the Lysistrata, v. 389.
(2) See Faber on the Origin of Pagan Idolatry, vol. ii. p. 256.

there sat women weeping for Thammuz." On which are founded the beautiful lines of Milton in the first book of Paradise Lost.

> The love-tale
> Infected Sion's daughters with like heat,
> Whose wanton passions in the sacred porch
> Ezekiel saw, when by the vision led
> His eye survey'd the dark idolatries
> Of alienated Judah.

AGLAURIA.

A festival in honour of Aglauros (or Agraulos,) daughter of Cecrops, who, with her sisters Pandrosus and Erse, was an object of much veneration at Athens. There are many romantic legends concerning them, which may be read in Ovid and other authors. One is, that Aglaurus threw herself down from the Acropolis in pursuance of an oracle, which declared that such a sacrifice was necessary to avert a desolating war from Attica. For this she was deified by her countrymen, who assigned for her worship a grotto under the rock of the Acropolis, near to the grotto of Pan.[1] Here the Ephebi took the oath required by law on their arriving at manhood; to which Demosthenes alludes in the Oration on the Embassy. (See the note to this Translation, vol. ii. p. 212.) Aristophanes makes his women swear by Aglaurus and Pandrosus.[2]

ANACEA.

In honour of the Dioscuri, or Castor and Pollux, who were worshipped at Athens under the name of Anactes, or Anaces.[3] The story is, that Theseus having carried off Helen, the two brothers led an army to Attica and threatened the people with vengeance, but were appeased by a timely submission and the restoration of their sister. The Athenians, to requite their merciful treatment, granted divine honours to the Spartan-born Twins, and built them a temple near

(1) As to its position, see Wordsworth, Athens and Attica, chapter xii. who quotes the Ion of Euripides, v. 492.—

> ὦ Πανὸς θακήματα καὶ
> παραυλίζουσα πέτρα
> μυχώδεσι μακραῖς,
> ἵνα χοροὺς στείβουσι ποδῶν
> Ἀγραύλου κόραι τρίγονοι
> στάδια χλοερὰ πρὸ Παλλάδος
> ναῶν.

Schömann, de Comitiis, 323, infers from Pausanias, i. 18, that there was another temple of Aglaurus in the Agora.

(2) Lysistrata, 439. Thesmophoriazusæ, 533.

(3) Pausanias, ii. 22; x. 38. The title may have denoted nothing more than kings or princes. Plutarch however derives it (not improbably) from the old word ἀνακός, *careful;* (thus we have ἀνακῶς ἔχειν in Herodotus, i. 24). Kings, because they took care of their people, came at first to be called ἄνακες, (the old form of ἄνακτες,) *guardians* or *superintendants;* and the Tyndaridæ took such pains to maintain orderly discipline among their troops in Athens, that they received this truly royal title. Possibly it may be connected with their general character of protecting divinities, σωτῆρες, for as such they were worshipped, especially by mariners, who invoked the *Fratres Helenæ, lucida sidera,* to calm the wind and the tempest Other derivations less probable are suggested by Plutarch. (Vit. Thes. 33.)

the Acropolis, not far from that of Aglaurus. Here, as Polyænus relates, (I. 21.) a stratagem was practised by Pisistratus, not unlike that of his son Hippias on the memorable day of the Panathenæa. The Athenians, having been assembled by him in the Anaceum, deposited their arms: he began to address them in a low voice, and was requested to come to the vestibule, where they could hear him better: his friends then seized the arms, and carried them to the grotto of Aglaurus.

ANDROGEONIA.

Androgeos, son of Minos, having been murdered in Attica, (the manner of his death is variously related,) his father made war upon the Athenians; who appeased him by an annual tribute of seven youths, and instituted games in honour of the deceased. Pausanias (I. 1.) tells us there was an altar of Androgeos in Phalerum. The tale, which poets have made so familiar, is told at considerable length by Plutarch in his Life of Theseus. Virgil refers to it briefly Æneid, VI. 20.—

> In foribus lethum Androgeo: tum pendere pœnas
> Cecropidæ jussi (miserum!) septena quotannis
> Corpora natorum.

ANTHESTERIA.

See DIONYSIA.

APATURIA.

The gathering of the clans[1] (for such is the meaning of the word) was an important festival, in which pleasure was combined with business; the political object being, to ascertain by means of the Phratores, or members of the same clan, what children were entitled to the rights of citizenship. It was celebrated in the month of Pyanepsion, and lasted for three days.

On the first day the clansmen met at the house of some opulent member, and were regaled with a handsome supper. In allusion to this, Aristophanes in the Acharnians makes Sadocus, the son of Sitalces, who had been created an Athenian citizen, express a desire to eat sausages at the Apaturia.[2]

On the second day there was a public sacrifice, more especially to Jupiter Phratrius and Pallas.

On the third day the business commenced. Fathers introduced their children who were born in that year to the members of the

(1) From α in the sense of ἅμα and πατήρ. Thus Xenophon describes it, Hellen. i. c. 7, s. 8, ἐν οἷς οἵ τε πατέρες καὶ οἱ ξυγγενεῖς ξύνεισι σφίσιν αὐτοῖς—where it is unnecessary to change πατέρες into φράτορες with Schneider. The derivation of the word from ἀπάτη, and the supposed origin of the festival in the stratagem of Melanthus, are highly improbable. (See the Archæological Dictionary.) The Apaturia were celebrated by people of Ionic descent, except those of Ephesus and Colophon. (Herodotus, i. 147.)

(2) Acharnians, 145.—

> ὁ δ' υἱὸς, ὃν Ἀθηναῖον ἐπεποιήμεθα,
> ἤρα φαγεῖν ἀλλᾶντας ἐξ Ἀπατουρίων.

clan, in order that they might be entered in the register.[1] Each father took an oath on behalf of his child, that he was a genuine born citizen, and offered the sacrifice of a sheep or a goat. If any person objected to the child's admission into his clan, he went through the formality of removing the victim from the altar. The objections were then heard and decided by the clansmen. An appeal to a jury was allowed on behalf of any one who was rejected. Adopted children and newly-created citizens were introduced and admitted in like manner. At the close of the proceedings the flesh of the victims, together with wine, was partaken of by the members.[2]

ARRHEPHORIA.

See ante, page 248, note.

ASCLEPIEA.

Celebrated on the eighth of Elaphebolion in honour of Æsculapius. The God had a temple at Athens, with beautiful statues and pictures. (Pausanias, I. 21.)

BENDIDEA.

In honour of Bendis, the Thracian Artemis, who had a temple in Piræus. It was celebrated on the twentieth of Thargelion with a procession and torch-race.

BOEDROMIA.

A thanksgiving to Apollo Boedromius, *the Succourer.* The rite itself and also the month Boedromion probably received their names from some occasion on which this succour was afforded. Plutarch, in his Life of Theseus, traces the origin of the festival to the battle fought with the Amazons at Athens; but he makes no mention of Apollo.

BRAURONIA.

A festival of Artemis or Diana, celebrated every fifth year in the township of Brauron on the eastern coast of Attica, where, according to an Athenian legend, Iphigenia landed on her return from Tauris, and became the priestess of a temple, in which she deposited the image of the Tauric Goddess. Pausanias saw a statue, said to be a copy of this by Praxiteles, in the Athenian Acropolis.[3]

The important part of the Brauronia was the consecration to Artemis of young girls between five and ten, who went through the strange ceremony of creeping on their hands and knees like bears: a rite first established by way of atonement for the crime of certain youths, who had killed a favourite bear of the Goddess. It was considered necessary that every freeborn Athenian maiden should have received

(1) This was called τὸ κοινὸν οι φρατορικὸν γραμματεῖον. See Schömann, Antiq. Jur. Publ. 208.

(2) There are frequent allusions to these proceedings in the orators. See Isæus, de Ciron. Hered. 71. Demosthenes, cont. Eubul. 1315, cont. Macart, 1054.

(3) Pausanias, i. 23, 33 Euripides, Iphigenia in Tauris, 1449.

this consecration, before she could be given in marriage. Hence the representative of the chorus of women in the Lysistrata, recounting different epochs of her girlhood, says [1]—

> Then in my yellow dress I was a bear at the Brauronia.

CHLOEA.

A festival of Ceres, celebrated in Thargelion, when the corn was in the green blade, whence the Goddess was called Chloe or Verdant, and under that name had a temple erected to her near the Acropolis.[2]

COTYTTIA.

Nocturnal rites of not a very sober character in honour of Cotytto, the Thracian Venus. They are referred to by Horace, Epod. XVII. 56.

> Inultus ut tu riseris Cotyttia
> Vulgata, sacrum liberi Cupidinis ?

And by Juvenal, II. 92.—

> Cecropiam soliti Baptæ lassare Cotytto.

CRONIA.

The festival of Saturn, celebrated on the twelfth of Hecatombæon, as we learn from Demosthenes: (cont. Timocr. 708.) Aristophanes speaks of it as being old-fashioned: (Nubes, 398.) There was a joint temple of Saturn and Rhea near that of Jupiter Olympius. (Pausanias, I. 18.)

DELPHINIA.

Celebrated on the sixth day of Munychion in honour of Apollo Delphinius. The story of Apollo appearing to the Cretan sailors in the shape of a Dolphin is told in the Homeric hymn. Hence this surname, and hence the ancient Pytho was changed to Delphi. The Apollo Delphinius of the Athenians however is to be distinguished from the Apollo Pythius. (Pausanias, I. 19.) One of the remarkable things in Greek mythology is, the number of titles and characters under which the same Deity was worshipped; which indeed has given rise to various theories. As to the position of the Pythium in the Agora, see Wordsworth's Athens and Attica, p. 185.

DIASIA.

It has already been mentioned (ante, p. 66) that this festival, which occurred in the month Anthesterion, is not to be confounded with the Pandia. Thucydides mentions it in connexion with the story of Cylon's conspiracy, (I. 126.) "Cylon"—he says—"consulted the oracle at Delphi, and was told by the God to seize the Athenian Acropolis at the greatest festival of Jupiter. Having

(1) Aristophanes, Lysistr. 641.—

> ἑπτὰ μὲν ἔτη γεγῶσ' εὐθὺς ἠῤῥηφόρουν·
> εἶτ' ἀλετρὶς ἦ δεκέτις οὖσα τἀρχηγέτι·
> κᾆτ' ἔχουσα τὸν κρόκωτον ἄρκτος ἦ Βραυρωνίοις.

(2) Aristophanes, Lysistr. 835. Hence εὐχλόοι Δήμητρος in Sophocles, Œd. Col. 1600.

received a force from Theagenes and prevailed on his friends, when the Olympia of Peloponnesus came on, he seized the Acropolis to establish himself as tyrant, supposing that this was the greatest festival of Jupiter, and that it was suitable to his enterprise, as he had been a conqueror at the Olympic games. He never stopped to consider, nor did the oracle declare, whether the greatest festival in Attica or elsewhere was intended. For the Athenians have their Diasia (so they call the greatest festival of Jupiter Milichius) outside the city; in which the whole population offer sacrifice, many not with victims, but with cakes[1] in their country fashion."

Aristophanes speaks of the Diasia as an occasion of feasting and merry-making. (Nubes, 408, 864.)

Diipolia.

The history of this is given by Mitchell in a note to the Clouds of Aristophanes, v. 984.[2]

"The Buphonian festival grew out of the sacrifices in honour of the Zeus Polieus. In the earlier stages of Athenian civilisation the nature of the soil and the use which was made of oxen for the purposes of agriculture required that the utmost care should be taken to keep up so valuable a stock. The life of an ox was accordingly put upon the same footing with that of a man; and the altars of Jupiter, before which whole hecatombs fell in after-times, were then satisfied with the offering of a little salted meat and a few cakes. The first slaughter of an ox was a circumstance to put the whole of the little town of Cecropia, as Athens was then called, into a state of unwonted agitation. It happened during the reign of Erechtheus and under particular circumstances. The usual sacrifice in honour of the Zeus Polieus was taking place in the Acropolis, when an ox accidentally breaking loose ran towards the offerings and began to make free with them. One Thaulon, or, according to Porphyry, the priest of Jupiter himself, irritated by this sacrilegious intrusion, struck him dead with a blow of his hatchet. A consciousness of legal guilt however presently came across him; he dropped his hatchet in a fright and fled for his life. A law was now passed, that in future this particular day of the feast should be called Buphonia, and that certain ceremonies should be observed in memorial of the first slaughter of an ox. Accordingly it became an established custom, that, just as every thing was prepared for the usual sacrifice, a number of oxen should be made to pass by the altar, and that the one who tasted of the offerings on it

(1) Cakes of dough made in the shape of victims. Such is the explanation of *θύματα ἐπιχώρια* given by the Scholiast, which is adopted by Goeller and others.

(2) *ἀρχαῖά γε καὶ Διπολιώδη καὶ τεττιγων ἀναμεστα,*
καὶ Κηκείδου καὶ Βουφονίων.

The poet here is stringing together some of the most antiquated practices at Athens, putting the Diipolia and Buphonia on a par with the custom of braiding the hair with golden grasshoppers, and with the dithyrambic songs of Ceceydas which were quite out of date.

should be put to death. The custom further enjoined certain young girls to bring water in vessels for the purpose of sharpening the instruments of sacrifice, the servants of the God bringing the instruments themselves. The priest then smote the victim; but no sooner was the blow struck, than with all the marks of terror in his countenance he let fall the axe and fled for his life. His accomplices in the meantime partook of the victim; the skin of the animal was sewed up, having previously been filled with hay; and the party, having tied this shapeless mass to a plough, proceeded to justify themselves before a mock tribunal appointed for the purpose. The young girls, who had furnished the water for sharpening the sacrificial instruments, laid the blame upon those who had actually sharpened them; these transferred it to the slaughterers of the victim, while the slaughterers referred the guilt to the hatchet itself, which had committed the murder. This last, having no means of pleading its own cause, was condemned as the real murderer, and thrown into the sea."

He gives references to Suidas, Harpocration, and other authorities.

DIONYSIA.

The worship of Dionysus or Bacchus—

> Bacchus who first from out the purple grape
> Crush'd the sweet poison of misused wine—

was popular in most parts of Greece, especially in the Ionian states. That it should be accompanied with riotous mirth, revelry, mummeries and buffoonery, cannot be a matter of surprise. He was the God that gave to mortals a respite from labour, a pleasing oblivion of sorrow; who put the poor and humble, for a time at least, on an equality with the rich and great, and who deserved the gratitude of all classes of mankind. While to Ceres they were indebted for the principal necessaries of life, to Bacchus they owed the chief source of its pleasure and joy.[1] *Dissipat Evius curas edaces*, is a sentiment which has been repeated and acted upon in all ages.

(1) Euripides, Bacchæ, 274.—

> δύο γὰρ, ὦ νεανία,
> τὰ πρῶτ' ἐν ἀνθρώποισι, Δημήτηρ θεά,
> Γῆ δ' ἐστίν· ὄνομα δ' ὁπότερον βούλει κάλει·
> αὕτη μὲν ἐν ξηροῖσιν ἐκτρέφει βροτούς·
> ὁ δ' ἦλθεν ἐπὶ τἀντίπαλον ὁ Σεμέλης γόνος,
> βότρυος ὑγρὸν πῶμ' εὗρε κεἰσηνέγκατο
> θνητοῖς, ὃ παύει τοὺς ταλαιπώρους βροτοὺς
> λύπης, ὅταν πλησθῶσιν ἀμπέλου ῥοῆς,
> ὕπνον τε, λήθην τῶν καθ' ἡμέραν κακῶν,
> δίδωσιν, οὐδ' ἔστ' ἄλλο φάρμακον πόνων.

And v. 416.-

> ὁ δαίμων ὁ Διὸς παῖς
> χαίρει μεν θαλίαισιν,
> φιλεῖ δ' ὀλβοδότειραν Εἰ-
> ρήναν, κουροτρόφον θεαν.
> ἴσαν δ' εἴς τε τὸν ὄλβιον
> τόν τε χείρονα δῶκ' ἔχειν
> οἴνου τέρψιν ἄλυπον.

Horace's verses (Carm. I. 18.)—

Siccis omnia nam dura Deus proposuit; neque
Mordaces aliter diffugiunt solicitudines.
Quis post vina gravem militiam aut pauperiem crepat?
Quis non te potius, Bacche pater, teque, decens Venus?

(Carm. III. 22.)—

Tu spem reducis mentibus anxiis
Viresque, et addis cornua pauperi,
Post te neque iratos trementi
Regum apices neque militum arma.

Or those of Tibullus (I. 7, 41.)—

Bacchus et afflictis requiem mortalibus affert,
Crura licet duro compede pulsa sonent.
Non tibi sunt tristes curæ nec luctus, Osiri,
Sed chorus et cantus et levis aptus amor—

are but the forerunners of Dryden's—

Bacchus ever fair and young
Drinking joys did first ordain;
Bacchus' blessings are a treasure,
Drinking is the soldier's pleasure,
Rich the treasure,
Sweet the pleasure,
Sweet is pleasure after pain:

and hundreds of similar effusions.

When Caliban says—

That's a brave god and bears celestial liquor;
I will kneel to him—

he only does that which the Greeks, or Egyptians, or Phœnicians, or whoever were the first worshippers of Dionysus, did, when they created for themselves an imaginary Wine-God.[1]

A feast of Bacchus was celebrated in very early times in the rural districts of Attica. It was a thanksgiving for the vintage which had just been got in. Peasants assembled carrying *thyrsi*, or poles surmounted with bunches of vine-leaves. The goat was sacrificed to the God, on whose tree he committed depredation. A joyful hymn was sung round the altar; this was afterwards exalted into the dithyramb. There were songs also of a grotesque and ludicrous kind, accompanied with dances of the same character. The performers wore masks or smeared their faces with the lees of wine. Who could have thought that the glories of the Attic drama would spring from such an origin? There were rude processions and mummeries, in which the slaves were allowed the same liberties as their masters. One part of the diversion was to mount in a wagon, and assail the passers-by with coarse and obscene jests[2]. Another was the *Ascoliasmus*,[3] or dancing on goat-skins smeared with oil; in which the

(1) See Herodotus, ii. 48, 49, and Mitchell's Introduction to his edition of the Frogs of Aristophanes, p. 23, &c.
(2) See vol. ii. p. 51.
(3) See Aristophanes, Plutus, 1129, and the notes.

same laughable accidents occurred as at our fairs, where people run races in bags. Virgil compares the Attic vintage-fairs with those of ancient Italy, (Georgic, II. 380.)

> Non aliam ob culpam Baccho caper omnibus aris
> Cæditur, et veteres ineunt proscenia ludi:
> Præmiaque ingeniis pagos et compita circum
> Theseidæ posuere, atque inter pocula læti
> Mollibus in pratis unctos saliere per utres.
> Necnon Ausonii, Trojâ gens missa, coloni
> Versibus incomptis ludunt risuque soluto,
> Oraque corticibus sumunt horrenda cavatis;
> Et te Bacche vocant per carmina læta, tibique
> Oscilla ex altâ suspendunt mollia pinu.

This rude kind of worship, forming the basis of that which was adopted in the state religion of Athens, underwent considerable changes not only by the increased splendour of its ceremonial, but by the importation of novel and mystic rites from Thrace, Phrygia, and Egypt. The simple Wine-God was exalted into a greater Deity, who inspired his votaries with a more potent enthusiasm. Such was the Dionysus Zagreus, a Deity of the Orphic Theology, whose[1] worship was introduced at Athens by Onomacritus. He was the son of Zeus and Persephone, and reputed to be equal with his father: mangled and slain by the Titans, he was afterwards mysteriously reborn from the Theban Semele. He was associated in religious honours with Ceres and with Rhea; he received the Thracian titles of Evius and Sabazius; he was often identified with the Egyptian Osiris, as Ceres was with Isis.[2] His worship was attended with frantic orgies, and with the exciting music of the flute, the drum, and the timbrel: men and women went promiscuously in wild procession, disguised as Satyrs and Nymphs, wearing the fawn-skin, and carrying not only the vine-branch, but the oak, the pine, the yew, and the ivy.[3] The Phallus was borne aloft, as the

(1) Pausanias, viii. 37. Herodotus, vii. 6. Faber's Origin of Pagan Idolatry, ii 464. The ancient myth appears to be adopted by Euripides, Bacchæ, 288, 526.
(2) See Mitchell's Introduction to the Frogs, pp. 16, 82, 97. And as to a Bacchus, the son of Ceres, see title Eleusinia.
(3) Euripides, Bacchæ, 59.—

> αἴρεσθε τἀπιχώρι' ἐν πόλει Φρυγῶν
> τύμπανα, 'Ρέας τε μητρὸς ἐμά θ' εὑρήματα

V. 105, &c.—

> ὦ Σεμέλας τροφοὶ Θῆ-
> βαι στεφανοῦσθε κισσῷ·
> βρύετε, βρύετε χλοήρει
> σμίλακι καλλικάρπῳ,
> καὶ καταβακχιοῦσθε δρυὸς
> ἢ ἐλάτας κλάδοισι, &c.
>
> * * *
>
> ὦ θαλάμευμα Κουρή-
> των ζάθεοί τε Κρῆτες
> Διογενέτορες ἔναυλοι,
> ἔνθα τρικόρυθες ἄντρο .

[Βυρσοτονον

emblem of fertility.[1] The holy madness with which the God inspired his followers was believed to be of a prophetical character.[2] There were Bacchanalian mysteries communicated to those who liked to be initiated, which, as it was supposed, had a peculiar efficacy in relieving the afflicted conscience, and reconciling the guilty mortal with the offended deities. In later times the business of imparting these mysteries fell, as we have seen, into the hands of jugglers and impostors, who made a lucrative trade of it.[3] The persons most powerfully smitten with the Bacchanalian frenzy were, as might be expected, the women, who not only found a wonderful charm in the orgies themselves, but eagerly embraced the opportunity which they afforded of breaking from domestic seclusion. They probably had some influence in extending the celebration of these Bacchic mysteries, which appear in the first instance to have met with violent opposition, as we see from the legends of Lycurgus and Pentheus, which were dramatised with great effect by Æschylus and Euripides. The latter in his beautiful play of the Bacchæ describes the deadly struggle between Pentheus and the new Divinity, in which Pentheus, though he has the best of the argument, is crushed by the God's superior power. The women are the chief instruments of his

βυρσότονον κύκλωμα τόδε
μοι Κορύβαντες εὗρον·
ἀνὰ δὲ Βάκχια συντόνῳ
κέρασαν ἡδυβόᾳ Φρυγίων
αὐλῶν πνεύματι, ματρός τε Ῥέας
εἰς χέρα θῆκαν, κτύπον εὐ-
άσμασι Βακχᾶν.

Compare v. 205, 462, 862, 1055.

(1) See Athenæus, v. 201. Aristophanes, Acharn. 259.

(2) Bacchæ, 298.

μάντις δ' ὁ δαίμων ὅδε· τὸ γὰρ Βακχεύσιμον
καὶ τὸ μανιῶδες μαντικὴν πολλὴν ἔχει·
ὅταν γὰρ ὁ Θεὸς ἐς τὸ σῶμ' ἔλθῃ πολὺς,
λέγειν τὸ μέλλον τοὺς μεμηνότας ποιεῖ.

(3) See vol. ii. p. 94. Grote's History of Greece, i. 25, &c. Euripides, Bacchæ, 40

δεῖ γὰρ πόλιν τήνδ' ἐκμαθεῖν, κεἰ μὴ θέλει,
ἀτέλεστον οὖσαν τῶν ἐμῶν Βακχευμάτων.

In the following lines he speaks more particularly of the mysteries (471, &c.):—

Πενθευς.
τὰ δ' ὄργι' ἐστὶ τίν' ἰδέαν ἔχοντά σοι,

Διονυσος.
ἄρρητ' ἀβακχεύτοισιν εἰδέναι βροτῶν.

Πενθευς.
ἔχει δ' ὄνησιν τοῖσι θύουσιν τίνα;

Διονυσος.
οὐ θέμις ἀκοῦσαί σ', ἔστι δ' ἄξι' εἰδέναι.

Πενθευς.
εὖ τοῦτ' ἐκιβδήλευσας, ἵν' ἀκοῦσαι θέλω.

Διονυσος.
ἀσέβειαν ἀσκοῦντ' ὄργι' ἐχθαίρει θεοῦ.

vengeance; they to whose licentiousness, as Pentheus contended, the nocturnal rites afforded so dangerous an encouragement.[1]

Allusions to the myths and mysteries of Bacchus abound in the Latin poets: as Horace, Carm. I. 18.—

Non ego te, candide Bassareu,
Invitum quatiam, nec variis obsita frondibus
Sub divum rapiam, &c.

Carm. II. 19.—

Bacchum in remotis carmina rupibus
Vidi docentem, (credite posteri,)
Nymphasque discentes, et aures
Capripedum Satyrorum acutas.
Evoe! recento mens trepidat metu,
Plenoque Bacchi pectore turbidum
Lætatur. Evoe! parce Liber,
Parce, gravi metuende thyrso, &c.

Carm. III. 25.—

Quo me, Bacche, rapis tui
Plenum?
* * * *
Non secus in jugis
Exsomnis stupet Evias,
Hebrum prospiciens, &c.

Virgil, Æneid. IV. 30.—

Sævit inops animi, totamque incensa per urbem
Bacchatur: qualis commotis excita sacris
Thyas, ubi audito stimulant trieterica Baccho
Orgia, nocturnusque vocat clamore Cithæron.

Compare Æneid. VIII. 385. Propertius, III. 15.—

Quod superest vitæ per te et tua cornua vivam,
Virtutisque tuæ, Bacche, poeta ferar.
Dicam ego maternos Ætnæo fulmine partus,
Indica Nysæis arma fugata choris:
Vesanumque novâ nequicquam in vite Lycurgum,
Pentheos in triplices funera grata greges:

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(1) The following is an example, in which Pentheus decidedly has the best of the argument. He says, v. 221.—

κλύω δὲ νεοχμὰ τήνδ' ἀνὰ πτόλιν κακα,
γυναῖκας ἡμῖν δώματ' ἐκλελοιπέναι
πλασταῖσι Βακχείαισιν, ἐν δὲ δασκίοις
ὄρεσι θοάζειν, τὸν νεωστὶ δαίμονα
Διόνυσον, ὅστις ἐστὶ, τιμώσας χορυῖς·
πλήρεις δὲ θιάσοις ἐν μέσοισιν ἑστάναι
κρατῆρας, ἄλλην δ' ἄλλοσ' εἰς ἐρημίαν
πτώσσουσαν εὐναῖς ἀρσένων ὑπηρετεῖν,
πρόφασιν μὲν ὡς δὴ μαινάδας θυοσκόους,
τὴν δ' Ἀφροδίτην πρόσθ' ἄγειν τοῦ Βακχίου.

To which the answer is, v. 314.—

οὐχ ὁ Διόνυσος σωφρονεῖν ἀναγκάσει
γυναῖκας εἰς τὴν Κύπριν, ἀλλ' ἐν τῇ φύσει
τὸ σωφρονεῖν ἔνεστιν ἐς τὰ πάντ' ἀεί.
τοῦτο σκοπεῖν χρή· καὶ γὰρ ἐν Βακχεύμασιν
οὖσ' ἥ γε σώφρων οὐ διαφθαρήσεται.

As to the dreadful excesses committed by those who took part in the Bacchic mysteries at Rome, which were at length put down by the Senate, see Livy. xxxix. 8, &c.; Cicero, De Legibus, ii. 15. See also Mitchell's Introduction to the Frogs, pp. 102, 105, 322.

Curvaque Tyrrhenos delphinum corpora nautas
In vada pampinea desiluisse rate:
Et tibi per mediam beneolenti flumine Naxon,
Unde tuum potant Naxia turba merum,
Candida laxatis onerato colla corymbis
Cinget Bassaricas Lydia mitra comas.
Mollia Dircææ pulsabunt tympana Thebæ;
Capripedes calamo Panes hiante canent.

Catullus, 6).—

Sæpe vagus Liber Parnassi vertice summo
Thyadas effusis evantes crinibus egit.

The votaries of Cybele are called by this poet *Mænades*, the common title of Bacchanalians. Ibid. 59.—

Ubi capita Mænades vi jaciunt hederigeræ.

Mrs. Hemans expresses her astonishment that Bacchus should have been crowned with the ivy:—

Oh, how could fancy crown with thee
In ancient days the god of wine,
And bid thee at the banquet be
Companion of the vine?
Thy home, wild plant, is where each sound
Of revelry hath long been o'er,
Where song's full notes once peal'd around,
But now are heard no more.

Had he been nothing more than the Wine-God, perhaps the ivy should have been dispensed with: but there were the mysteries *variis obsita frondibus.*

I must return however to the subject of the Attic Dionysia.

According to the more generally received opinion,[1] there were four Attic festivals in honour of Bacchus, celebrated in the four consecutive months, Posidon, Gamelion, Anthesterion, and Elaphebolion, *December, January, February,* and *March.*

I. The little or rural Dionysia, in the month Posidon. This was celebrated in each of the townships of Attica, under the superintendence of the local magistrates. It was the vintage-feast of the olden times, with such additional amusements as modern invention had introduced; the principal of which were scenic or dramatic exhibitions. There were provincial theatres at which old pieces were performed by strolling players. We have seen how Demosthenes taunts Æschines with playing third parts on the stage at Colyttus. (Vol. ii. pp. 72, 90.) While however in the purely rural districts this feast retained for the most part its ancient simplicity, that in the Piræus, though considered as a rural feast in point of law, was celebrated with as much magnificence as the city festivals.

II. The Lenæa, or festival of the wine-press, was solemnized in the month Gamelion, which the ancient Ionians called Lenæon. It was

(1) The point is considered to have been established by Böckh, in opposition to Ruhnken's theory, which was, that the Lenæa and the Anthesteria were the same. Reference to these authors will be found in the Archæological Dictionary, title *Dionysia*, and in Buttman's first Excursus to the Oration against Midias, where some of the arguments are briefly stated.

superintended by the King-Archon. There was a grand procession to the temple of Lenæan Bacchus, together with dramatic performances, as we have seen by the law cited in the Oration against Midias. (Ante, p. 67.) This temple stood in the district called *Limne*, or the Marsh, and Hesychius tells us that dramas were performed here before the new theatre was built. As this festival occurred at a time of the year when all navigation was stopped, the spectators were almost entirely natives of Attica;[1] and perhaps, as Mitchell observes, the country people came then to visit their friends in the city, who returned the hospitalities shown them at the vintage-home.[2]

III. The Anthesteria, which occupied three days, from the eleventh to the thirteenth of Anthesterion, and which, like the Lenæa, were under the superintendence of the King-Archon. This was a festival devoted especially to the tapping and tasting of the new wine; to which a more serious rite was added, apparently as a corrective to the gross and sensual tendencies of the former.

The first day was called *Pithoigia*, or the broaching of the wine-casks.

The second was called *Choes*, or the Cups: tippling was literally the order of the day, and drunkenness an act of gratitude to the God. Prizes were given to those who could drink the quickest and the most.[3]

The other sports were of the same character; this being for the city what the December feast was for the country, a sort of Carnival and Saturnalia. On the eve and during the night of this second day there were mysteries, celebrated by women only in the temple of Bacchus in the Marsh. The wife of the King-Archon presided over them, with the assistance of fourteen women specially consecrated to the God. An oath which they took on the occasion is preserved in the Oration of Demosthenes against Neæra, p. 1371.

(1) Aristophanes, Acharnians, 502.—

οὐ γάρ με καὶ νῦν διαβαλεῖ Κλέων ὅτι
ξένων παρόντων τὴν πόλιν κακῶς λέγω.
αὐτοὶ γάρ ἐσμεν, οὑπὶ Ληναίῳ τ' ἀγών·
κοὔπω ξένοι πάρεισιν· οὔτε γὰρ φόροι
ἥκουσι, οὔτ' ἐκ τῶν πόλεων οἱ ξύμμαχοι.

(2) Introduction to the Frogs, p. 115. The same observation is indeed equally applicable to the ensuing festival.

(3) Aristophanes, Acharnians, v. 1000.—

ἀκούετε λεῴ· κατα τὰ πάτρια τοὺς χοᾶς
πίνειν ὑπὸ τῆς σάλπιγγος· ὅς δ' ἄν ἐκπίῃ
πρώτιστος, ἀσκὸν Κτησιφῶντος λήψεται

Compare v. 1202, 1224.

From these lines an argument has been derived to prove the identity of the Lenæa and the Anthesteria; because it is clear from v 504, that the play of the Acharnians was acted at the Lenæan festival. But we must remember that Dicæopolis is there addressing the spectators, and discussing realities, whereas in the other passages the action of the play is going on. The same argument might be used to identify the rural Dionysia with the Lenæa. See v. 202.

The third day was named *Chytri,* or Pots; the reason of which Mitchell expounds:[1]

"The change from the last day in Carnival to the first of Lent in Roman Catholic countries could hardly be more striking than that from the first two days to the third of the Anthesteria. If the first two belonged to the living, the third, as we collect from a passage of Theopompus, preserved by a Scholiast on the Frogs, as exclusively belonged to the dead; and if the people of Attica pampered their own bodies or those of their visitors on the first two days, the third called upon them to offer up prayers for the repose of souls departed; the festival itself bearing the name of *Chytri,* from the pots containing the seeds or shell-fruits which on this solemn occasion were offered to Hermes Chthonius."

IV. The great or city Dionysia, celebrated in the month of Elaphebolion, was the most splendid of them all. It was the spring of the year; the seas had again become navigable; and a concourse of visitors from all parts of Greece was drawn to Athens either by business or pleasure or both. A grand procession in honour of Bacchus, choruses of dancers and musicians, and dramatic performances in the theatre, were the principal of the appointed solemnities. The new tragedies and comedies were now brought out, exciting the most eager competition for victory and an intense interest among the audience. The chief Archon presided, and distributed the prizes. It was upon this occasion that Demosthenes was to be crowned in the theatre under the decree of Ctesiphon. It was upon this that he officiated as Choragus, when he was insulted by Midias. Besides these grander exhibitions conducted under state regulations, there were others equally attractive to a different class of spectators, to the great rabble of boys, slaves, and miscellaneous multitudes that were gathered in the town. Athens was indeed a vast fair; the best idea of which is to be gathered from the lively descriptions of such writers as Mitchell and Becker. An extract from the Charicles, Scene X., will conclude the present subject:—

"Innumerable guests had poured in to the scene of the festival from all the regions of Greece; every house was kept open for the reception of distant friends; every tavern was too small to accommodate its crowd of visitors. Many had even erected booths in the streets and public places, intending to turn the festival to profit, for, besides the sight-seers and pleasure-hunters, a mass of the lower classes had come in the hopes of picking up something among such a confluence of idlers. Retail dealers of all descriptions had arrived: bevies of Corinthian beauties, jugglers and

(1) Introduction to the Frogs, p. 117. It appears that comic dramas were at times performed on this day; upon which this ingenious writer (in l. c.) has a long discussion, to which I must refer the reader. Compare the Scholiast and notes on the Frogs, 210.

strolling mountebanks laden with the apparatus of their art and the decorations of their booths: all were ready to devote their utmost exertions to the amusement of the public and the replenishment of their own purses.

* * * * *

"The Dionysia had begun, and pleasure was the sole pursuit of all through the live-long day. Strangers and citizens paraded the streets in holiday attire, with garlands on their brows; altars and Hermæ were wreathed with chaplets: and in every thoroughfare stood huge bowls filled with the gift of the God, inviting all that liked to drink to their very hearts' content.

"Everywhere peals of loud laughter and boisterous mirth assailed the ear; nought was to be seen but troops of merry-makers, and reckless swarms of comastæ, impudently caricaturing the pomp and ceremony of the festal procession.

"But the most curious sight of all was the mob that beset the theatre. Since early dawn the seats had been crammed with spectators, who attentively followed the solemn contest of the tragedians, previous to being diverted a little later by the more lively fare of the comedians. From time to time stormy rounds of cheering and applause burst from the serried mass; while at intervals might also be heard a shrill whistling, directed at an obnoxious passage in the play or the bad performance of some actor, or perchance meant for some one among the audience.

"Outside the theatre also sight-seers of more humble pretensions found abundant materials for amusement. Here a puppet-man had set up his little theatre, and with practised hand guided the hidden strings that set in motion pigmy figures, which performed the most grotesque antics to the intense delight of the children and nurses standing round. Elsewhere a Thessalian exhibited the dexterity of two damsels, who with the most infinite coolness and agility made surprising leaps amidst sharp sword-blades stuck upright in the ground, threw somersaults, or sitting down upon a potter's wheel in rapid motion read and wrote with ease; whilst the man himself from time to time opened his mouth wide and let fly a stream of sparks among the horrified spectators, or with apparent difficulty gulped down swords and daggers. Not far off a juggler had pitched his tent, taking the prudent precaution of placing projecting barriers to keep over-curious observers from his apparatus table. Simple rustics and fishermen beheld with wonderment, how at first the pebbles lay one under each of the mysterious cups, then all are under one, after which they all vanished, finally reappearing out of the conjuror's mouth. But when, after causing them to disappear a second time, he finally drew them all three out of the nose and ears of the nearest spectator, several of them scratched their heads as not knowing what to make of it, and one plain countryman shaking his head said to his neighbour, 'I say, if this chap come near

my farm, then good bye to goods and gear.' But the heartiest laughter was heard round the booth of a man who was exhibiting a number of trained monkeys, dressed in motley suits, with masks before their faces, and which performed elaborate dances like so many well-behaved human beings. The trainer's switch kept them a long while in order, and his man was just collecting the small copper coins from the bystanders, when a wag amused himself with throwing some nuts among the dancers, who in a twinkling, forgetful alike of all propriety and the parts they played, made a descent on the prey and began scratching and biting each other for the possession of it, to the great amusement of the spectators. The confusion which ensued was a fine opportunity for the thieves and cut-purses, who were following their calling in great force and levying contributions on the crowd or at the tables of the pedlars, where all sorts of wares, clothes, and ornaments, both false and genuine, were displayed for sale. Not a few of the purchasers, when they came to pay, found themselves to be minus girdle and purse; but it was Dionysia time, and so nobody was disconcerted by such occurrences."

ELEUSINIA.

Demeter or Ceres, the Goddess of the earth and the cornfield, was the object of a very ancient worship at Eleusis in Attica, founded upon her own personal visit to that country after the loss of her daughter Persephone or Proserpine. Who has not heard of the rape of Proserpine by the Stygian king? Those who have not read about it in Ovid or Claudian, may have read the poem of Barry Cornwall. Homer's hymn to Ceres shows how the Goddess, inconsolable for the loss of her daughter, wandered over the earth till she came to Eleusis, where under the disguise of an old woman she was received into the house of Celeus, king of the country, and became the nurse of his son Demophoon; she refused for a long time either to talk or to taste food, and it was only the merry and playful humour of the maid-servant Iambe that roused her from her deep dejection. She became fondly attached to the child, and would have made him immortal, but for the unfortunate curiosity of his mother Metanira, which led to a discovery of their celestial visitor, who then ordered that a temple should be erected to her upon a spot near the fountain Callichorus, where she had first rested from her fatigue. There she took up her abode for a year, still sorrowing for her daughter, and inflicting the curse of sterility upon the whole earth, until at length Jupiter made with her that solemn compact, by which Proserpine was to be restored to her society for six months of the year, spending the other six with her infernal consort. No sooner was the wrath of the Earth-Goddess appeased, than the curse of barrenness was removed, and the Rharian plain, then first teeming with Cereal produce, became celebrated for its fertility. To commemorate these events, and evince her gratitude towards those who had hospitably

received her in her distress, Ceres condescended to establish her own religious worship in the country, of which she constituted Celeus himself, together with Triptolemus, Diocles, and Eumolpus, the interpreter. They were the founders of priestly families, in whom the superintendence of her worship remained long hereditary. The most distinguished of these in the historical times were the Eumolpidæ, from whom was always chosen the Hierophant, or high-priest of the mysteries: and who performed other religious duties which we have already had occasion to notice. (Ante, p. 148.) Triptolemus, according to another legend, was taught the art of sowing and ploughing by Ceres, which he communicated to the world. He is the *unci puer monstrator aratri* of Virgil: in Ovid he is the child whom Ceres nurses.[1]

The worship of Ceres, thus founded at Eleusis in very early times, afterwards, when all the Attic states were united under one government, was adopted by the Athenians and became a part of the state religion. The Eleusinians, acknowledging their political dependence on Athens, retained by express stipulation (as Pausanias tells us, I. 38.) the conduct of a worship which had been specially revealed and entrusted to them: and this in course of time, under the management of their priests, and with the sanction and aid of the Athenian state, was expanded into the Festival and Mysteries whose fame is world-wide, and which have made the name of Eleusis nearly as celebrated as that of Athens herself: *Eleusina sanctam illam et augustam,*

Ubi initiantur gentes orarum ultimæ.

The festival of the Mysteries, as it was celebrated in the historical period of the Athenian republic, and indeed for many centuries until its final abolition, is to be regarded in two points of view. In its external form it was a commemoration of the sorrow and subsequent gladness of Ceres, and a great part of the ceremonies had reference more or less direct to the events of the ancient legend. But there was a secret as well as a public worship. Upon the ceremonial handed down from the primitive times there were engrafted mysterious rites and revelations, which were supposed to exercise a religious influence upon the mind, and one of a more salutary kind than the Bacchic mysteries. These were imparted to the communicants upon certain conditions, one of which was secrecy. What their nature and

(1) Compare Apollodorus, i. 5. Callimachus, Hymn. in Cererem. Ovid's Fasti, iv. 435, &c. Diodorus v. 4, 5, 68. The legends concerning Ceres were many and various. That the giver of corn and bread should be worshipped as the inventress of laws and civilization (θεσμοφόρος) is not surprising. She was identified also with Isis, Rhea, and other divinities. Herodotus, ii. 59. Euripides, Helena, 1321. Diodorus, i. 13, 14, 29; v. 69. Pausanias, viii. 25; ix. 25. Strabo, iv. 198, citing Artemidorus, who mentions an island near Britain (Mona probably), where there was a worship similar to that of Ceres and her daughter in Samothrace. See Faber's Origin of Pagan Idolatry, iii. pp. 27, 101, 176. As to the story of Ceres being entertained by Phytalus, founder of the priestly family of the Phytalidæ, see Pausanias, i. 37. Ceryx, progenitor of the Ceryces, was, according to one legend, a son of Eumolpus. (Ibid. 38.)

character were—whether they had any reference to the doctrine of a future state—whether they taught any higher and purer notions of the Deity or of human duty than what was to be found in the pagan mythology—whether they were imported from Egypt or elsewhere, or whether they were of Greek origin, and at what particular time they were introduced—all these matters have been the subject of various conjecture and controversy. And the point cannot be fully decided.[1]

(1) Warburton in his Divine Legation of Moses, book ii. section 4, has collected an immense number of authorities upon the subject: but they are far from supporting his theory that "the Mystagogue taught that Jupiter, Mercury, Bacchus, Venus, Mars, and the whole rabble of licentious Deities, were only dead mortals—the errors of Polytheism were detected, and the doctrine of the Unity taught and explained in the Mysteries." It is indeed of itself highly improbable, that the priests of the Deities, who officiated at the public worship, should declare in private to a large body of the worshippers, that the whole thing was a sham and a falsehood. Such a system of double dealing could not have been carried on very long. Warburton perceived this difficulty, and tries to avoid it by suggesting "that the discovery of this Supreme Cause they made consistent with the notion of local tutelary Deities, beings superior to men and inferior to God, and by him set over the several parts of his creation." But the question immediately occurs—who were these tutelary Deities? Was Ceres one? or was Pallas one? Not according to Warburton; for they were but dead mortals: and therefore, unless the priests adopted a new nomenclature in their theology, of which there is no evidence, they would not have satisfied even the votaries of this more refined polytheism.

The theory respecting the sixth Book of Virgil's Æneid that "the descent of his hero into the infernal regions was a figurative description of an initiation, and particularly a very exact picture of the Spectacles in the Eleusinian Mysteries," has been successfully demolished by Gibbon. See his Critical Observations on the sixth Æneid, published in the second volume of his miscellaneous works. Touching the subject of the Mysteries he observes (p. 500):—

"But our curiosity is yet unsatisfied; we would press forward into the sanctuary, and are eager to learn what was the secret which was revealed to the initiated and to them alone. Many of the profane, possessed of leisure and ingenuity, have tried to guess what has been so religiously concealed. The secret of each is curious and philosophical; for, as soon as we attempt this inquiry, the honour of the mysteries becomes our own. I too could frame an hypothesis, as plausible perhaps and as uncertain as any of theirs, did I not feel myself checked by the apprehension of discovering what never existed. I admire the discretion of the initiated: but the best security for discretion is, the vanity of concealing that we have nothing to reveal."

If the secret was, that there was no secret, this could hardly have prevented its being betrayed, one would imagine.

Faber, in his learned and interesting work on the Origin of Pagan Idolatry, while he rejects Warburton's theory respecting the Mysteries, adopts one consonant to his own views of Pagan worship. His main position is that the polytheism of the Gentiles was a corruption of the true religion derived from the patriarchal ages; that all their mythological systems, though varying in form, had the same origin and the same meaning; their Gods, under different names, were really the same, all resolving themselves into a single God, who was esteemed the great father, their Goddesses likewise into one Goddess, who was the great mother; these two beings ultimately appearing as a sole divinity partaking of both sexes, who was the parent of the universe. The great compound Deity however, whom they thus worshipped, was not the true God, but only the hermaphroditic conjunction of the human parents of mankind, Adam and Eve, or these first parents resuscitated after the deluge in Noah and his wife. They were the regents of the mundane ship, astronomically worshipped in conjunction with the sun and moon, and materially identified with the whole frame of nature. In accordance with these views, which are elaborately set forth and discussed in three quarto volumes, he propounds his own theory of the Mysteries—in which term he comprehends all mysteries, whether Eleusinian, Curetic, Cabiric, Druidic, or any other; for all in his view were substantially the same. The following extracts taken from vol. iii. p.111, give the pith of his theory: the argument is pursued at great length in the whole of the same chapter.

The Athenians took the utmost care, by severe laws and regulations, to prevent the disclosure of the solemn secrets; and public opinion lent its aid for the same purpose. Any profanation of them was a high misdemeanour, triable only before a jury of the initiated. It nearly cost Æschylus his life, that he was thought to have spoken of them in his plays: he was acquitted by the Areopagus, on giving proof that he was never initiated. One of the charges against Alcibiades, which led to such serious consequences to Athens, was, that he had revealed the Eleusinian mysteries and held mock-celebrations of them at private houses.[1] Such conduct would be a far greater shock to Grecian sentiment than a betrayal of the secrets of freemasonry would be in England. The feeling is expressed by Horace, Carm. III. 2.[2]

Est et fideli tuta silentio
Merces. Vetabo, qui Cereris sacrum
Vulgârit arcanæ, sub îsdem
Sit trabibus fragilemve mecum
Solvat phaselon.

The Mysteries were sacred not only to Ceres but to Proserpine. The two Goddesses were associated as their common guardians.[3] Yet there was a division of them into the Greater and the Lesser; the one more strictly belonging to Ceres, the other to her daughter. The Lesser were celebrated in the month of Anthesterion at Agra on the Ilissus, and were a sort of preparation for the Greater, to which

"As the principal hero-god into whom all the others were thought finally to resolve themselves was the great father Noah, viewed as a reappearance of the great father Adam, the Mysteries exhibited in a sort of pantomime the mingled fortunes of those two primeval characters. They displayed the lapse of the soul from original purity into a state of darkness, confusion, and ignorance. They affected to teach the initiated how they might emerge from this state, how they might recover what had been lost, how they might exchange darkness for illumination, how they might pass from the gloom of error into the splendid brightness of a regained Paradise. They claimed to confer upon the epoptæ the glorious privilege of seeing things clearly, whereas before they were floundering in a turbid chaos of error and misapprehension.

"Paradise however was believed, rightly (I think) believed, to have coincided geographically with mount Ararat: so that the renovated world commenced from the very spot where the old world had begun; the second patriarch and his three sons were manifested in the self-same region where the first patriarch and his three sons had appeared; and as the country of Ararat comprehended the site of Eden, when the mariners of the ark quitted their gloomy confinement, they literally passed from the dark womb of their great mother into Paradisiacal light and security. The Mysteries therefore described the great father as being either shut up in an ark and set afloat on the surface of the water, or as being inclosed within some one of the many symbols of the diluvian ship. They represented him as remaining in this state of confinement either during a natural year, or during the mystical great year of the gods, or during a single day viewed as a type of a year. And they exhibited him as at length quitting his prison, and returning once more to the light of heaven."

(1) Thucydides, vi. 28, &c. Andocides, de Mysteriis, ii. 28. Ed. Bekker. This Oration is instructive on the law touching these matters. The orator himself, on his return to Athens after the expulsion of the tyrants, was tried for profanation of the Mysteries, and acquitted. See Warburton, l. c. pp. 205, 206. Mitchell's Introduction to the Frogs, 126. Meier and Schömann, Att. Proc. 66, 133.

(2) Gibbon argues, how improbable it was that Virgil, even if he had been initiated, would have incurred the censure of his friend Horace by revealing the secret.

(3) Τὼ Θεώ. Andocides, ibid. 29, 113.

admission might be obtained in the following year.[1] Slaves were excluded; but citizens of any Greek state, not being of disreputable character, might, on taking the required oath of secrecy, be initiated. In later times it was thrown open to all the world.[2]

The Great Mysteries were celebrated in Boedromion (August), lasting nine days, from the 15th to the 23d. The first day was called the Congregation,[3] because the Mysts, or persons who had received preparatory initiation, assembled at Athens. The second was called *Mysts to the sea*,[4] because they went down to the sea-side to undergo purification. The third was a day of fasting, on the evening of which they ate cakes of barley from the Rharian plain. On the fourth day the sacred basket,[5] containing poppy and pomegranate seeds, was drawn by oxen in a wagon, after which women followed carrying little caskets, *tacita sacra cistarum.*[6] (Apuleius, Metam. III.) The poppy, *cereale papaver*, was sacred to Ceres, because she had eaten of it for oblivion of her grief; (Servius, ad Virg. Georg. 212. Ovid's Fasti, IV. 511;) the pomegranate, because (according to the Homeric hymn, 375,) the eating of a grain had prevented the entire separation of Proserpine from Pluto. On the evening of the fifth day they marched to the temple at Eleusis by torch-light; the torch-bearer, who led the procession, was symbolical of Hecate leading Ceres in search of her daughter.[7] On the sixth day there was a grand pro-

(1) Warburton, ibid. 178, 179. He cites a fragment of Euripides containing an elegant comparison.—

ὕπνος τὰ μικρὰ τοῦ θανάτου μυστήρια.

(2) Hercules was said to have been the first stranger admitted to initiation: to which there is an allusion in the Hercules Furens of Euripides, v. 613:—

τὰ μυστῶν δ' ὄργι' εὐτύχησ' ἰδών.

See Warburton, ibid. pp. 173, 174, 225, 226.

(3) Ἀγυρμός.

(4) Ἅλαδε μυσταί.

(5) The day was called καλάθου κάθοδος.

(6) These, according to Faber, were emblematic of the ark, of which Ceres, like Cybele and Isis, was a personification. The contents of the cistæ, according to Clemens Alexandrinus, were certain conical pyramids, cakes formed so as to exhibit the semblance of navels, pomegranates, and the hieroglyphic of the female principle. (Origin of Pagan Idolatry, iii. 130.)

(7) Sophocles refers to the torches in Œdip. Colon. v. 1048.—

ἢ λαμπάσιν ἀκταῖς,
οὗ Πότνιαι σεμνὰ τιθη-
νοῦνται τέλη
θνατοῖσιν, ὧν καὶ χρυσέα
κλῂς ἐπὶ γλώσσᾳ βέβακε
προσπόλων Εὐμολπιδᾶν.

Compare Ovid's Fasti, iv. 473.—

Illic accendit geminas pro lampade pinus:
Hinc Cereris sacris nunc quoque tæda datur.

Claudian, de Raptu Proserpinæ, sub init:—

Jam mihi cernuntur trepidis delubra moveri
Sedibus, et claram dispergere fulmina lucem,
Adventum testata Dei. Jam magnus ab imis
Auditur fremitus terris, templumque remugit
Cecropium; sanctasque faces attollit Eleusin;
Angues Triptolemi stridunt, et squamea curvis
Colla levant attrita jugis—
Ecce procul ternas Hecate variata figuras
Exoritur.

cession along the sacred road with loud and joyous shouts of Iacchus, Iacchus, which were continually repeated by an immense crowd until they arrived at Eleusis. Hence the day itself was named Iacchus, and a statue of Iacchus with a torch in his hand and a myrtle garland (who he was, we shall see presently) was carried from the temple of Ceres. (Pausanias, I. 2.) On the night of this day the persons duly qualified were initiated into the awful Mysteries in the Eleusinian temple,[1] and were then called Epoptæ, from their being admitted to a full inspection of the arcana. On the seventh day they returned to Athens; and, as if to make amends for the serious and solemn devotions of the night, a licence was given for all kinds of jesting and joking. The object, as we are told, was, to commemorate the jests of Iambe: but the Attic ladies did not content themselves with such sportive humour as served to beguile the griefs of Ceres. At a bridge over the Cephisus, where they stopped to rest, it was the custom to assail one another with the same coarse ribaldry as the Bacchanalians did from their carts at the rural Dionysia. The eighth was an additional day allowed for initiation, and was called Epidauria in honour of Esculapius, who, having come too late, had this special day assigned for him. (Pausanias, II. 26.) The last day was called *Plemochoæ*, from a ceremony of emptying two bowls, which perhaps concluded the whole affair. (Athenæus, XI. 496.)

But who or what was the Iacchus? At first, nothing more than the mystical cry of the worshippers, derived from the word ἰαχή. Afterwards it came to be personified, and a new mythical personage arose—Iacchus a son of Ceres, who in process of time was confounded also with the Bacchic Deity.[2] Cicero distinguishes them in his treatise *De Naturâ Deorum* (II. 24.) "Hinc Liber etiam: hunc dico Liberum Semele natum, non eum quem nostri majores auguste sancteque Liberum cum Cerere et Liberâ consecraverunt; quod quale sit, ex mysteriis intelligi potest. Sed quod ex nobis natos liberos appellamus, idcirco Cerere nati nominati sunt Liber et Libera: quod in Liberâ servant, Libero non item." What the original Iacchus however was, appears from the marvellous story related by Herodotus in his eighth book, which I give in his own words:[3]

"Dicæus, an Athenian, who was at this time in exile and in high

(1) The temple is represented by Strabo as being of equal capacity with one of the great theatres of Greece: its interior sacellum he calls a mystic cell or cavern (μυστικὸς σηκός, ix. 395.) Vitruvius assures us that it was of enormous magnitude, and that it was originally built without external columns, so that its sides must have presented the aspect of dead walls in the same manner as the old temples of Egypt. Aristides confirms the resemblance, observing that the whole of the spacious interior was comprehended within one house or external wall, as were the temples of Egypt and Babylonia, and as still are the temples of Hindostan and the East." Faber, (Origin of Pagan Idolatry, vol. iii. p. 270.) He concludes that it was constructed like the Labyrinths, with winding passages, by which the aspirants for initiation were conducted through darkness into light.

(2) Grote's History of Greece, i. 49 Mitchell's Introduction to the Frogs, p. 98.

(3) C. 65. Compare Aristophanes, Ranæ, 209, 311, 329, 384, and Mitchell's notes.

esteem with the Medes, stated that, when the army of Xerxes was ravaging Attica, then entirely deserted by the Athenians, he happened to be with Demaratus the Lacedæmonian in the Thriasian plain, and he saw a cloud of dust advancing from Eleusis, like the dust of about thirty thousand men: while they were wondering by what people the dust could be raised, they suddenly heard a voice, and it seemed to him that it was the cry of the mystic Iacchus: Demaratus, being ignorant of the Eleusinian rites, asked him what the sound meant, and he replied—'Demaratus, I am sure that some great disaster will befal the king's army. For it is plain, since Attica is deserted by her population, that the voice is a supernatural one, coming from Eleusis to avenge the Athenians and their allies. And, should it roll on for Peloponnesus, there will be danger for the king and his army on the continent: but, if it turn towards the fleet at Salamis, the king will be in danger of losing his naval force. This festival is celebrated by the Athenians every year in honour of the Mother and her Child, and any one of them or of the other Greeks that chooses is initiated: and the voice which you hear is their shout of Iacchus at this festival.' To which Demaratus answered—'Keep silence and tell no other person what you have said. For, should these words be carried to the king, you will lose your head; and neither I nor any one else will be able to save you. But keep quiet. As for this army, the Gods will look to it.'—Such was his counsel. And now, instead of the dust and the voice, there appeared a nubilous vapour, which mounting upward moved on towards Salamis in the direction of the Greek armament: and so they knew that the navy of Xerxes would be destroyed."

Mitchell's remarks upon this subject in his Introduction to the Frogs (page 10) are worthy of our attention:

"The Grecian Demeter appears, and not merely in poetry, as the mother of two children, the one representative of the joyous, the other of the mournful principle of nature; the first hanging at a maternal breast swoln with the full tide of life, and drinking largely at its fount; the latter lost for a time to that mother's love, buried in the depths of earth, and consequently an object to her of deep solicitude and anxiety. The mournful principle has long been, or rather ought to have been long known to us under the name of Persephone: —how long is the joyous one of Iacchus to be confounded with the name of a Deity with whom he originally had nothing in common, and from whom, if we wish to have correct notions of antiquity in general and of the proceedings of Aristophanes in the following drama in particular, we must learn to separate him wide as the poles apart?

"But the case of a double principle, a joyous and mournful one, did not end in Greece with the mere external changes of nature. The inner world of man was found to have its variations as well as the outward frame of nature round him. The being, late so gay, suddenly droops, and medical skill cannot tell why. Dreadful visions

haunt his couch; and the earth, which had fostered him as a mother, now borrows a fury form, and seems anxious to shake him from her bosom. What has occasioned this dreadful change? The sting of guilt is at his heart; the wrath of an avenging power has been awakened; and are there no means, the sufferer asks himself, of appeasing an offended Deity, or will another life continue the torments which have so terribly begun in this? The Being, who framed the heart to ask these questions of itself, did not leave them to be asked in vain even in the heathen world, at all events in that portion of it with which we are best acquainted; and the three imaginary Deities, whom Attic poets introduced to explain the changes of the external world, Attic priests called in to satisfy the more fearful maladies of the moral world. Leaving it to other writers to describe more minutely the nine days' rites and ceremonies which took place annually at Athens or at Eleusis for this purpose, we content ourselves with observing generally, that those of the first five were such as a soul ill at ease and anxious to reconcile itself with an offended Deity found to be the best adapted to the purpose—fasting, sacrifice, and prayer—lustral rites by fire and water, and it may be, confession of sins. But the sixth day arrives, and all is changed: the expiatory rites are over; the load of present guilt and sorrow is removed—the glad name of Iacchus resounds from mouth to mouth—the joyous procession is formed, which with the image of Iacchus preceding transports so large a body of worshippers from Athens to Eleusis; feast and dance consuming the hours there till night arrives, and solemn revelations assure the listeners not only that sins duly expiated are forgiven, but that a new life and happier scenes await the departed good, and that consequently, whether death or a future and eternal life are in their thoughts, those thoughts might rest in peace and hope."[1]

That the Athenians attached the greatest importance to this fes-

(1) Compare Isocrates, Panegyr. 46.—

Δήμητρος γὰρ ἀφικομένης εἰς τὴν χώραν ὅτ' ἐπλανήθη τῆς Κόρης ἁρπασθείσης, καὶ πρὸς τοὺς προγόνους ἡμῶν εὐμενῶς διατεθείσης ἐκ τῶν εὐεργεσιῶν ἃς οὐχ οἷόν τ' ἄλλοις ἢ τοῖς μεμυημένοις ἀκούειν, καὶ δούσης δωρεὰς αἵπερ μέγισται τυγχάνουσιν οὖσαι, τούς τε καρποὺς, οἳ τοῦ μὴ θηριωδῶς ζῆν ἡμᾶς αἴτιοι γεγόνασι, καὶ τὴν τελετὴν, ἧς οἱ μετασχόντες περὶ τὸ τῆς τοῦ βίου τελευτῆς καὶ τοῦ σύμπαντος αἰῶνος ἡδίους τὰς ἐλπίδας ἔχουσιν.

Aristophanes, Ranæ, 448.—

ωρῶμεν ἐς πολυῤῥόδους
  λειμῶνας ἀνθεμώδεις,
τὸν ἡμέτερον τρόπον,
τὸν καλλιχορώτατον,
παίζοντες, ὃν ὄλβιαι
  Μοῖραι ξυνάγουσιν.
μόνοις γὰρ ἡμῖν ἥλιος
  καὶ φέγγος ἱλαρόν ἐστιν,
ὅσοι μεμυήμεθ' εὐ-
σεβῆ τε διήγομεν
τρόπον περὶ τοὺς ξένους
  καὶ τοὺς ἰδιώτας.

tival of Ceres and held it in the highest veneration, we have abundant evidence. So indeed did all the ancient Greeks, as we are assured by Pausanias, (X. 31.) The law of Lycurgus, (see Vol. II. p. 321.) imposing a fine on women for riding in a carriage to the Mysteries, had both a religious and a political object, to prevent an undue exhibition of pride, and to put the rich and poor on some footing of equality upon so solemn an occasion. We have seen how Midias used to drive his wife to them in a carriage and pair. (Ante, p. 117.) The occupation of Decelea by Agis rendered it dangerous to walk in procession as usual by the sacred road, and the worshippers were obliged to go to Eleusis by sea. Not only did this greatly diminish the number of those who could attend the festival, but many of the ancient observances were necessarily discontinued, and the omission was keenly felt by the people. When Alcibiades returned from exile, having been made commander-in-chief of all the forces, he conceived it would be a glorious thing and vastly increase his popularity, if he could restore the splendour of the old procession, and enable the mass of the citizens to join in it. He communicated his design to the Eumolpids and the other priests, and it being approved of, he made his preparations. To prevent surprise, he sent out his scouts, posted sentinels on the hills, and secured the passes: then leading out of the city all the troops that could be spared, and placing the priestly functionaries with their mystic treasures in the centre, he led the whole train to Eleusis in perfect order and silence. The enemy ventured not to interrupt him. After the ceremonies had been duly performed, he conducted them all back in safety to Athens; the people declaring that he had performed the duties both of a high-priest and a general. (Plutarch, Vit. Alcib. 34.)

Upon the whole, though the real nature of the Mysteries has never been ascertained, it has been commonly thought that some kind of instruction was conveyed by means of allegorical sights or shows, perhaps accompanied with explanations by the Mystagogue.[1] It would

(1) The following passages (among others) are cited by Warburton.—Dio Chrysostom, Orat. 12.—

Σχεδὸν οὖν ὅμοιον, ὥσπερ εἴτις ἄνδρα Ἕλληνα ἢ Βάρβαρον μυεῖσθαι παραδιδοὺς εἰς μυστικόν τινα οἶκον, ὑπερφυῆ κάλλει καὶ μεγέθει, πολλὰ μὲν ὁρῶντα μυστικὰ θεάματα, πολλῶν δὲ ἀκούοντα τοιούτων φωνῶν, σκότους τε καὶ φωτὸς ἐναλλὰξ αὐτῷ φαινομένων, ἄλλων τε μυρίων γενομένων.

Aristid. Eleus.—

Τινι δ' ἄλλῳ χωρίων ἢ μύθων φῆμαι θαυμαστότερα ἐφύμνησαν, ἢ τὰ δρώμενα μείζω ἔσχε τὴν ἔκπληξιν ἢ μᾶλλον εἰς ἐφαμίλλον κατέστη ταῖς ἀκοαῖς τὰ ὁρώμενα;

Themistius, Orat. in Patrem.—

ἀποσμήξας πανταχόθεν, ἐπεδείκνυ τῷ μυουμένῳ μαρμαρύσσον τε ἤδη, καὶ αὐγῇ καταλαμπόμενον θεσπεσίᾳ, ἥτε ὁμίχλη ἐκείνη καὶ τὸ νέφος ἀθρόον ὑπερρήγνυτο· καὶ ἐξεφαίνετο ὁ νοῦς ἐκ τοῦ βάθους, φέγγους ἀναπλέως καὶ ἀγλαΐας ἀντὶ τοῦ πρότερον σκότου.

Stobæus Sermo, 119.—

τὰ δὲ πάσχειν πάθος οἷον οἱ τελεταῖς μεγάλαις κατοργιαζόμενοι· διὸ καὶ τὸ ῥῆμα τῷ ῥήματι, καὶ τὸ ἔργον τῷ ἔργῳ τοῦ τελευτᾷν καὶ τελεῖσθαι προσέοικε, πλάναι τὰ πρῶτα καὶ περιδρομαὶ κοπώδεις, καὶ διὰ σκότους τινὸς ὕποπτοι πορεῖαι καὶ ἀτέλεστοι· εἶτα πρὸ τοῦ τέλους αὐτοῦ τὰ δεινὰ πάντα, φρίκη, καὶ τρόμος, καὶ ἱδρὼς·

seem too, that the doctrines taught were of a comforting and moralising tendency. The testimonies of Plato, Aristophanes, Cicero, and many other writers who are referred to in the Divine Legation, all conspire to establish this. Notwithstanding some corruptions and abuses, the high character of the institution was maintained for many centuries after the extinction of Grecian independence; and people from all countries came to learn the supposed sacred truths at Eleusis. Cicero and Atticus were initiated: so was Augustus. Nero, travelling in Greece after the murder of his mother, was deterred from presenting himself for this purpose by the consciousness of his crime. (Suetonius, Vit. Neron. c. 34.) "Peregrinatione quidem Græciæ, Eleusiniis Sacris, quorum initiatione impii et scelerati voce præconis submoverentur, interesse non ausus est." The Christians had a great aversion to these rites; at which they asserted that horrible and impious spectacles were exhibited. The Neoplatonists, on the other hand, set up the Mysteries against Christianity, as if purer and better doctrines were revealed in them. Amid the general decay of Pagan worship, they still retained some vestiges of their primeval sanctity. Julian the Apostate was a zealous believer in them, and received initiation during his residence at Athens. Valentinian I. issued his command for the suppression of all nocturnal sacrifices; but Prætextatus, who governed in Greece, persuaded him to make an exception in favour of the Eleusinian Mysteries, on the plea that without them life would be insupportable to the Greeks. They finally perished under the edict of Theodosius, which abolished Pagan worship altogether. (See Warburton, ibid. pp. 172, 173, 209—212, 218—220, 254, 262. Gibbon's Decline and Fall, III. 130, 262, 464.)

Dupuis in his *Abrégé de l'Origine de tous les Cultes*, Chapter XI. expresses himself as follows:

"Les mystères d'Eleusis, et en général tous les mystères, avaient pour but d'améliorer notre espèce, de perfectionner les mœurs, et de contenir les hommes par des liens plus forts que ceux que forment les lois. Si le moyen ne nous parait pas bon, parce qu'il tient à l'illusion et au prestige, on ne peut disconvenir que le but, sous ce rapport, ne fut louable. Aussi l'orateur romain met-il au nombre des établissemens les plus utiles à l'humanité les mystères d'Eleusis, dont l'effet a été, dit-il, de civiliser les sociétés, d'adoucir les mœurs sauvages et féroces des premiers hommes, et de faire connaître les véritables principes de morale qui initient l'homme a un genre de vie qui seul soit digne de lui.

"Rien de plus pompeux que la procession des initiés s'avançant vers le temple d'Eleusis. Toute la marche était remplie par des

καὶ θάμβος· ἐκ δὲ τουτου, φῶς τι θαυμάσιον ἀπηντησεν, ἢ τόποι καθαροι καὶ λειμῶνες ἐδέξαντο, φωνὰς καὶ χορείας καὶ σεμνότητας ἀκουσμάτων ἱερῶν καὶ φαντασμάτων ἁγίων ἔχοντες· ἐν αἷς ὁ παντελὴς ἤδη και μεμυημένος ἐλεύθερος γεγονὼς καὶ ἄφετος περιϊὼν ἐστεφανωμένος ὀργιάζει· καὶ σύνεστιν ὁσίοις καὶ καθαροῖς ἀνδράσι.

danses, par des chants sacrés, et marquée par l'expression d'une joie sainte. Les ornemens intérieurs qui le décoraient, et les tableaux mystérieux qui étaient disposés circulairement dans les pourtours du sanctuaire, étaient les plus propres à piquer la curiosité et à pénétrer l'âme d'un saint respect. Tout ce qu'on y voyait, tout ce qu'on y racontait, était merveilleux, et tendait à imprimer un grand étonnement aux initiés : les yeux et les oreilles y étaient également frappés de tout ce qui peut transporter l'homme hors de sa sphère mortelle.

"Il y avait des scènes de tenèbres et de lumière que l'on faisait passer successivement sous les yeux du recipiendaire qu'on introduisait dans le temple d'Eleusis, et qui retraçaient les combats que se livrent dans le monde ces deux chefs opposés."

ELEUTHERIA.

An annual festival held at Platæa, and attended by deputies from all the Greek states, being a thanksgiving to Jupiter the Deliverer for their victories over the Persians. It was instituted under the advice of that wise and honest patriot, Aristides, and doubtless intended to cement the friendly union of the Greeks. Every fifth year there were games. (Plutarch's Life of Aristides, 21.)

HALOA.

An offering of the first-fruits of the harvest to Ceres and Bacchus, accompanied with sports, which took place in a barn, whence the name is derived. It appears to be the same as the Thalysia. (See Taylor's note to the Oration against Neæra, p. 1385.)

HEPHÆSTEA.

Games in honour of Vulcan, at which the torch-race was performed. (Herodotus, VII. 98.) The God had a temple in the Urban Colonus, near to the King's Porch. (Pausanias, I. 14. Wordsworth, Athens and Attica, p. 174.) The name and site of this temple (says Wordsworth) lead us to infer, that it was the goal proposed to the racers who ran with their lighted torches, having started from the outer Ceramicus and running through the Dipylum into the city.

HERACLEA.

A sacrifice to Hercules, performed (as it appears) without the walls of the city. (See Vol. II. p. 306.) The election to a priesthood of Hercules is mentioned in the Oration against Eubulides, (p. 1313.) As to his temples, see Herodotus, (VI. 116.)

HERMÆA.

This seems to have been a sort of holiday for the Athenian boys, who met in the gymnasia to do certain honours to Hermes, the patron God of those establishments, and to enjoy their sports and

amusements. The law cited by Æschines in the Oration against Timarchus, which we have already noticed (ante, p. 244), forbade the presence of adults on this occasion. (See Becker's Charicles, Translation, p. 306.)

LAMPADEPHORIA.

See ante, p. 245.

LENÆA.

See DIONYSIA.

MUNYCHIA.

A festival of Diana celebrated in the month Munychion. She had a temple in the port of Munychia, which just before the battle of Salamis was blocked up by the Persian fleet, one wing of which stretched from it to the promontory of Cynosura. Hence, as it seems, a special festival in her honour was appointed after the victory. (Herodotus, VIII. 76, 77. Pausanias, I. 1. Plutarch, De Gloriâ Atheniensium, 349.) The oracle of Bacis, cited by the historian, alludes to the event.[1]

OLYMPIA.

In honour of Jupiter Olympius at Athens, whose magnificent temple, commenced by Pisistratus, was finished seven hundred years after by the emperor Adrian. (Pausanias, I. 18.)

OSCHOPHORIA.

The feast of boughs, which was a celebration of the return of Theseus from Crete; at which the chief ceremony was a procession from the temple of Bacchus to that of Athene Sciras at Phalerum, under the conduct of two youths habited like girls and carrying vine-boughs with clusters of grapes. The origin of the custom was this. When the third occasion arrived for sending to Minos his tribute of seven youths and seven maidens, Theseus having been chosen as one of them, he selected two young men of spirit and courage, but with fair complexions and girlish faces, and after thoroughly disguising them, and teaching them to counterfeit in every way the voices and manner of girls, he substituted them for two of the maidens designed for Crete. Upon their safe return, these two youths marched up in their female dresses to Athens, and, it being vintage time, they carried in their hands boughs and clusters of the vine. This costume was retained after the establishment of the festival; and, as the object was to commemorate the joy of Athenian parents for the

(1) Ἀλλ᾽ ὅταν Ἀρτέμιδος χρυσαόρου ἱερὸν ἀκτὴν
νηυσὶ γεφυρώσωσι, καὶ εἰναλίην Κυνόσουραν,
ἐλπίδι μαινομένῃ λιπαρὰς πέρσαντες Ἀθήνας,
δῖα Δίκη σβέσσει κρατερὸν Κόρον, Ὕβριος υἱὸν,
δεινὸν μαιμώοντα δοκεῦντ᾽ ἀνὰ πάντα πυθέσθαι.
Χαλκὸς γὰρ χαλκῷ συμμίξεται, αἵματι δ᾽ Ἄρης
πόντον φοινίξει. τότ᾽ ἐλεύθερον Ἑλλάδος ἦμαρ
εὐρύοπα Κρονίδης ἐπάγει, καὶ πότνια Νίκη

deliverance of their children, the bough-bearers were obliged to be persons whose parents were alive. Another custom, having reference to the same purpose, was, that certain matrons called *Deipnophoræ*, or supper-bearers, busied themselves during the ceremonies in handing about refreshments for the young people, and telling them amusing stories, as if they were their mothers cheering them on the eve of a perilous journey. The presidency of the sacrifices was committed to the house of the Phytalidæ, in recompense for their former hospitality to Theseus.

Further particulars of the fable may be found in Plutarch's Life of Theseus (22, 23.) As to Athene Sciras, see Pausanias I. 1, I. 36.)

PANATHENÆA.

This was in some respects the grandest of all the Athenian festivals, as might indeed be expected, considering that it was in honour of the tutelary Goddess Athene. Such a festival doubtless existed in very early times, but it first received this title, implying its more comprehensive and exalted character, after the union of the Attic people attributed to Theseus. The story is thus related by Plutarch; (Vit. Thes. 24.) I give it in brief:

"After the death of his father Ægeus, he formed a great design, and united all the inhabitants of Attica in one city and commonwealth. There were before that time many separate people, who were constantly engaged in wars and quarrels. He went from one to the other, and proposed a union. The lower classes he easily persuaded: the higher he brought over by promising to establish a republic, and reserving to himself only the command of the army and the maintenance of the laws: others complied out of fear. He then abolished all the separate courts, councils, and communities, and built one council-chamber and city-hall, where it stands to this day: the old and the new city he formed into one, and named it Athens, ordaining a common feast and sacrifice to be for ever celebrated, which he called Panathenæa."

The festival thus established became an annual one, and was held in the month of Hecatombæon. The sacrifices were on a scale of great magnificence. Each town in Attica, and in the prosperous days of the republic every subject town and colony, contributed a bull: the flesh of the victims was distributed among the multitude; and a solemn prayer was offered up for the prosperity of Athens. (Herodotus, VI. 3.)

The games and entertainments that followed were numerous and costly. Demosthenes in the first Philippic speaks of the vast sums of money that were expended on them. (Vol. I. p. 69.) There were gymnastic games, and races of all kinds, including the torch-race. The race-course by Agræ on the Ilissus, which was either constructed or completed by Lycurgus, was called *Stadium Panathenaicum*.

(Wordsworth's Athens and Attica, chapter 20.) Not to mention cock-fights and minor diversions for the masses of the people, there were pyrrhic and other dances, musical contests in the Odeum, both vocal and instrumental, first introduced by Pericles: (Plutarch, Vit. Pericl. 13.) likewise recitations of Epic poetry, more especially that of Homer by the rhapsodists, which Hipparchus made compulsory; (Ælian's Various History, VIII. 2;) and public disputations by philosophers: of which last the Panathenaic Oration of Isocrates is a specimen. Readings of other literary works appear to have been permitted. Thus Herodotus read his history to the Athenians on one of these days, as he had done before to the assembled Greeks at Olympia. (See the preface to Schweighæuser's edition.) The prize in these contests was an earthenware jar, filled with oil from the sacred olive of the Acropolis.[1]

With these or most of these games and amusements was the national festival of Athene solemnized every returning year; and that it lasted many days, may partly appear from what has been stated. Every fourth year however it was celebrated on a still grander scale, with a greater variety of exhibitions, and increased pomp and splendour; whence it received the name of the Great Panathenæa. Other points of distinction between the quadriennial and the annual festival are not so well ascertained; but the principal glory of the former was the procession and carriage of the Peplus to the temple of Minerva Polias.

The Peplus was a robe or mantle for the statue of the Goddess, beautifully embroidered in gold. The designs were furnished by the best artists in Athens, and the needlework executed by virgins specially selected for the occasion. Various subjects were represented on it; but the victory of the Gods over the Titans always formed one, Jupiter and Minerva being the most prominent figures. Heroes and men of distinguished merit had a place sometimes allotted to them in a side of the picture; nor could there be a much higher panegyric upon an Athenian, than to say that he was worthy of the Peplus.[2]

The procession which conveyed this offering to the Goddess was attended by an immense concourse of people, men and women, young

(1) To which Pindar alludes, Nemea, x. 61.—

ἀδεῖ-
αί γε μὲν ἀμβολάδαν
ἐν τελεταῖς δὶς Ἀθαναίων μιν ὀμφαὶ
κώμασαν. Γαίᾳ δὲ καυ-
θείσᾳ πυρὶ καρπὸς ἐλαίας
ἔμολεν Ἥρας τὸν εὐά-
νορα λαόν. ἐν ἀγγέων
ἕρκεσιν παμποικίλοις.

They were called ἀμφορεῖς Παναθηναϊκοί. See Athenæus, v. 199.

(2) Aristophanes, Equites, 565.—

εὐλογῆσαι βουλόμεσθα τοὺς πατέρας ἡμῶν, ὅτι
ἄνδρες ἦσαν τῆσδε τῆς γῆς ἄξιοι καὶ τοῦ πέπλου

and old, either on foot, or on horseback, or in carriages:[1] in fact the whole population both of town and country assembled for the occasion, to celebrate the great event of their national union. The route which they took, and the order of the proceedings, are described by Wordsworth in his Athens and Attica (chapter XXIII).

"The principal feature in the procession was the Panathenaic peplos, which was carried to the Acropolis as a periodic offering to Minerva Polias: and with which her statue, in her temple there, was subsequently invested.

"The peplos, at the commencement of its course, was hoisted aloft with cables, like a ship's sail, on a horizontal bar attached to the summit of a vertical mast; in this position the peplos moved above the heads of the crowd, with its variegated tissue of battles, its pictures of chariots and horses, gods and giants, floating in the air above them.

"Such was the principal feature of this procession in the best days of Athens. In later times, when a fantastic ingenuity sought to display itself even in religious solemnities, it attracted the wonder rather than the veneration of the spectator by its bold and complex machinery. Then the peplos assumed the character of a real sail; the nautical genius of Athens displayed itself in this its most gorgeous national pageant: the props of the peplos performed the functions of a yard-arm and a mast: its cables were converted into rigging: and the whole equipage was planted on a stately ship, which sailed on secret wheels, wafted along by the gale filling the bosom of its embroidered sail.

"The magnificent ship-like car, with all its splendid accoutrements, in which Santa Rosalia now makes her annual solemn procession through the gates and streets of the maritime city of Palermo, presents no doubt a striking resemblance of that which once sailed through the city of Athens at the Panathenaic festival. The correspondence in other respects—as the season of the year chosen for their celebration, and the diversions by which they were enlivened—between the Athenian and Sicilian solemnity, is also worthy of notice.[2]

(1) To this Aristophanes alludes in the Nubes, 69.—

> ὅταν σὺ μέγας ὢν ἅρμ' ἐλαύνῃς πρὸς πόλιν,
> ὥσπερ Μεγακλέης ξυστίδ' ἔχων.

"The day in which it should be their lot to guide their festal car in the sacred procession through this doorway (the Propylæa) into the Citadel, was held out by fond mothers to their aspiring sons as one of the most glorious in their future career." Wordsworth, Athens and Attica, p. 113.

(2) The procession of St. Rosalia is described by the author of the Subaltern, fully bearing out Wordsworth's comparison.

"There are many festivals in Palermo in honour of departed worthies, but in point of magnificence that of Santa Rosalia far surpasses them all. It occurs on the anniversary of the miracle which her bones are said to have performed, and is kept with processions and feastings and fireworks and all sorts of public shows, at which the king and his court equally with the people attend. For some weeks previous to

"The particular route, which was chosen for the progress of the Panathenaic procession through the Athenian city, was dictated no doubt by the characteristic suggestions of Athenian taste. To pass through the most splendid streets of Athens, to spread itself abroad in the squares, to visit the most august temples, to display a new and pompous spectacle to the theatre, and to pause at last in the highest and proudest spot in the whole city—in a word, after its festal voyage, to anchor in the Acropolis—was a duty which this procession owed both to itself and them. The route therefore which it followed may serve as a tacit guide to conduct us through the city of Athens in the most advantageous way.

"Let us take our station with it at its commencement, at the north-west of the city, a little outside the walls, and at the point where Hippias was engaged in marshalling this same procession, when his brother Hipparchus fell near the Leocorium in the inner Ceramicus: we then follow it into the city by the Dipylum; it passes along an avenue formed by the two parallel arcades, which have been described above as leading to the Agora, and traverses the circle of the Agora between the Areopagus and the Pnyx: it enters the valley of Limnæ lying on the south of the Acropolis, it passes beneath the theatre, and at length reaches the Eleusinium: this is the point of curvature in its course. It now tends westward, coasting the northern rocks of the Acropolis. It ascends the Acropolis itself by the western entrance through the marble portals of the Propylæa. Here the procession halts. The peplos is carried to its destination in the temple of Minerva Polias.

the arrival of the great day all Palermo is in commotion. Frame-works of timber are fabricated, which the carpenters arrange along the Marino, whence the fireworks may be shown, and an enormous car is made, which being covered over with silken hangings supports upon poles a lofty stage, and is surmounted by an image of the saint half hidden in a mass of silken clouds. The car itself is supported upon low truck wheels; but on its sides there are four other wheels of a wider span, which never touch the ground, but are turned round and round by a winch, which some of the persons whom the hangings conceal set in motion. At an early hour on the morning of St. Rosalia's day the car is discovered on the Marino. On the stage and surrounding the image of the saint are groups of women dressed in showy robes and crowned with flowers, while tied to the four large wheels are little children whom the silks and feathery wings fastened to their shoulders cause to represent angels. Then there is a sounding of trumpets and ringing of bells, which together with a volley of patteraros warn the surrounding country that the saint has appeared among men.

"No sooner is this clamour heard, than from far and near country people are seen driving their bullocks towards the city, which they yoke in a long string to the car. The farmer indeed who should refuse to lend his cattle for this purpose could not hope to prosper at the coming vintage; and happy is he who arriving first at the Marino succeeds in placing his bullocks next the car. Then is the machine set in motion, while from windows and balconies hats and handkerchiefs wave, and the air is rent with the tumult of voices, the braying of trumpets, and the roar of artillery. Thus slowly and with frequent halts the saint is conveyed through the main street towards the farther gateway; while, as it moves, the large wheels are turned slowly round, and the poor little angels go up and down till they are as effectually delivered from the weight of their morning's meal as if they were at sea in a gale of wind. It is surprising the degree of excitement which the procession seemed to create throughout the city—and the quantities of wine, fruit, sweetmeats, and other viands consumed are enormous."

"But the naval car does not remain here: it descends again into the city toward a temple which stood, as may be shown, not far from the western roots of the Acropolis, on the south side of the Areopagus, in the Agora. In this temple the vessel was laid up to be exhibited in after-times as an object of admiration to travellers, when it had ceased to perform its festal voyages—as the ducal Barge of Venice, the Bucentoro, in which the Doge solemnized the annual marriage of the sea, is now preserved for the same purpose in the Venetian arsenal."

(See Böckh's Public Economy of Athens, Transl. II. 219. Thucydides, VI. 56, 58. Lycurgus, cont. Leocrat. 161. Aristophanes, Nubes, 988. Pausanias, VIII. 2. Ælian, Var. Hist. VIII. 2.)

PANDIA.

See the Oration against Midias, ante, page 66.

PANDROSIA.

In honour of Pandrosus, daughter of Cecrops. (See Aglauria.) Her temple formed one of the chambers of the Erechtheum, the other being that of Minerva Polias. In the grove of Pandrosus were to be seen the fountain which Neptune raised with his trident and the impression of the trident upon the rock, and also the olive-tree produced by Pallas, when the two Divinities contended for the tutelage of Athens. Erechtheus decided against Neptune, and was killed with a blow of his trident. He was buried on the spot, and gave a general name to the temple which was afterwards built there, and in front of which he had a statue near to that of Eumolpus. The wrath of the Sea-God was appeased, and he became friendly to the city, in which his supposed son Theseus reigned. The myths (as usual) are various. According to one, Eumolpus the Eleusinian, a son of Neptune, makes war upon Erechtheus, to vindicate his father's claim to the Athenian Acropolis. According to another, Erechtheus or Erichthonius is a title of Neptune; indicating perhaps the reconciliation of Neptune to Athene and her city. "The Erechtheum"—says Wordsworth—" served, as it were, to mediate between the two rival Deities, Athene and Poseidon, to reconcile them to each other, and to endear Athens to both."

(Athens and Attica, chapter XVII. Grote's History of Greece, I. 77, 263, 267, 265. Pausanias, I. 26 and 27.)

PANIS FESTUM.

The worship of Pan was first established at Athens after the battle of Marathon. Herodotus relates the occasion: (VI. 105. Pausanias, I. 28.)

The Athenians, alarmed at the Persian invasion, sent to Sparta for assistance. Phidippides the courier, as he was passing over mount Parthenius in Arcadia, heard a voice calling him by his name. It was

the God Pan, who desired him to ask the Athenians, why they had never worshipped a Deity who was friendly to them, who had rendered them many services, and would render many more. Phidippides brought back this encouraging message to his countrymen, who, after the expulsion of the enemy, requited the God for his promised succour by consecrating to him a grotto in the rocky side of the Acropolis, and by establishing in his honour an annual sacrifice and torch-race.

The cave of Pan was, as we have seen (ante, p. 273), not far from that of Aglaurus. Close to it was the fountain Clepsydra, so called from the subterraneous flow of its streams in the dry season. (See Aristophanes, Lysistrata, 721, 911.) A cave would be the most appropriate place for a temple of the woodland God. The famous Corycian cave was sacred to Pan and the Nymphs: (Pausanias, X. 32.) As to the universal prevalcnee of grotto-worship, I refer the reader to the learned work of George Stanley Faber, who in his third volume, book V., chapter 7, gives an account of the numerous religious caverns that existed in Greece, Italy, Persia, India, Scythia, Scandinavia, &c. Many of these were artificial excavations in the rock, made with great care and labour, and forming it into devotional cells and chapels: among which not the least remarkable are those at Inkermann in the Crimea. (Ibid. p. 257.) All these are referred by Faber to his own particular theory, that the grotto represented the ark of the deluge. On the subject of Pan he writes thus: (Vol. II. p. 406.)—

"The Orphic poet celebrates him as the universal father, the true horned Zeus; and describes him as an infernal God, the conductor of ghosts like Mercury. He speaks of him as delighting to reside in caves; a part of his character which is common to nearly all the arkite Gods, who are continually represented either as dwelling in caverns, or nursed in caverns, or born in caverns. Porphyry has written a whole treatise on the subject, in which he gives many instances of this mode of worship; and he informs us that the sacred cave represented the world. But the world and the ark were venerated in mystic intercommunion: the consecrated grotto therefore shadowed out the latter as much as the former. Hence the birth of the great father from a cave denoted his birth from the ark. Porphyry mentions a cave in Arcadia dedicated to Pan and the Moon. By this it was meant that he was the husband of the Ark. He was highly venerated by the Arcadians, who borrowed both their name and their superstition from the ship Argha; insomuch that he was peculiarly styled the God of Arcadia. Here he was venerated as a sylvan Deity, who presided over herds of cattle, and who delighted to roam upon the summits of the loftiest mountains. He was likewise esteemed a guardian of orchards and a planter of vines; and he was represented with a sickle or a pruning-knife in his hand, fit for the purpose of dressing vineyards. In short, to use the language of Scripture when it speaks of his prototype, he was a husbandman of

man of the earth. Yet, while the Arcadians adored him in conjunction with the Moon, they had a remarkable opinion among them that they themselves were prior to that planet. This was true of them as a family: for the primeval arkites were of course prior to the vessel which they built, and which was astronomically represented by the Moon."

But what aid could the Athenians expect from the Woodland Deity? Pan was not merely a God of woods and shepherds, but the inventor of stratagems and the exciter of sudden alarms. Polyænus represents him as a general of Bacchus, defeating superior forces by a night-attack, having first terrified the enemy by the shouts of his men, multiplied by reverberation in the hills. From him all sudden and causeless fears have been called *Panic*. (Strategem. I. 2. Pausanias, X. 23. Cicero, Epist. ad Atticum, V. 20.)

To the same thing Ovid alludes in the Fasti (II. 247), according to the reading of Gronovius:

> Ipse Deus velox discurrere gaudet in altis
> Montibus, et subitas concitat ille fugas;

where others read *feras*.

PLYNTERIA.

The washing-day, when the robes and ornaments were taken from the statue of Athene Agraulos to be cleansed. During that time the statue was covered over, and all access to the temple of the Goddess was prohibited. Hence the day, which fell on the 25th of Thargelion, was regarded as one of the *dies nefasti*, on which it was unlucky to commence any important undertaking. Alcibiades having returned from exile upon this day, it was looked upon as an evil omen.

(Xenophon, Hellen. I. c. 4, s. 12. Plutarch, Vit. Alcibiad. 34.)

POSIDONIA.

Held in the month Poseidon in honour of Neptune. As to his connexion with Athens, see *Pandrosia*.

PROEROSIA.

A sacrifice offered at the time of seed-sowing to Ceres, for the prosperity of the crops.

PROMETHEA.

The festival of Prometheus, at which the chief amusement was a torch-race, commemorating the gift of fire to mortals by the Titan. The racers started from his altar in the Academy, and ran from thence to the city.

(Pausanias, I. 30.)

PYANEPSIA.

This was a feast instituted like the Oschophoria by Theseus, to celebrate his safe return from Crete, which happened on the 7th of

Pyanepsion. It took its name, like the month, from the custom of boiling a mess of beans,[1] because, as Plutarch tells us, the youths that returned put all that was left of their provisions into one pot, boiled it up together, and ate it with great rejoicing. And hence (says he) they carry in procession an olive-branch bound with wool, such as is used in supplications, crowned with fruits of all kinds, to signify that famine and scarcity were at an end [2]

(Vit. Thes. 22.)

SYNŒCIA.

This was established on the same occasion as the Panathenæa. The latter commemorated the political union of Attica; this the congregation of her people into one city: for, after the centralisation of the government by Theseus, many came from the rural districts to settle in Athens. The day of this feast was the 16th of Hecatombæon. Plutarch calls it Metœcia.

(Thucydides, II. 15. Plutarch, Vit. Thes. 24.)

THARGELIA.

This was a festival of Apollo and Diana, celebrated on the 6th and 7th of Thargelion. The first was a day of purification, when we are told that, according to an ancient custom, two human beings were sacrificed for the welfare of the whole community. We may reasonably doubt whether such a practice was kept up in the days of Athenian civilization. If so, it may have been occasional only, and it is probable, as a learned writer in the Archæological Dictionary suggests, (Title *Thargelia,*) that the persons selected for the expiatory sacrifice were condemned criminals. The second day was devoted to amusement, a procession and an exhibition of dancers forming the principal part of it. (See the Oration against Midias, ante, p. 67, Antiphon, De Chor. 143. Lysias, Apol. de Mun. init.) At this time also an adopted son was introduced to the members of his new Phratria, and his name entered in the register. (Isæus, De Apollod. Hered. 20, ed. Bekker.)

THESEA.

Theseus, the great legendary hero of Athens, is said towards the close of his life to have experienced the ingratitude of his countrymen, and to have ended his days in the isle of Scyrus. After the second Persian war, the Athenians were commanded by an oracle to gather his bones and bring them home. Cimon, having effected the conquest of Scyrus in the year B.C. 476, searched for the spot where Theseus was buried, and was guided to the discovery by an eagle,

(1) Πύαμος is the same as κύαμος. Bean-soup and its effects are spoken of in Athenæus, ix. 408

(2) He quotes a song which they used to sing on the occasion:—

εἰρεσιώνη σῦκα φέρειν καὶ πίονας ἄρτους
καὶ μέλι ἐν κοτύλῃ καὶ ἔλαιον ἀναψήσασθα.
καὶ κύλικ' εὔζωρον ὡς ἂν μεθύουσα καθεύδῃ.

whom he observed tearing up a mound of earth with her beak and talons. Under this was found a coffin of great size, together with a spear's head and a sword. He carried these precious relics with great pomp to Athens, where the people came out to meet him and offered sacrifice to the deceased hero. His ashes were interred in the north-western part of the city, and a temple was erected on the spot, which became a perpetual asylum for the oppressed, in remembrance that Theseus while he lived was a protector of innocence and a redresser of wrong. Pausanias places the Theseum near to the Gymnasium of Ptolemy; and Wordsworth speaks of its great beauty and perfect state of preservation. (Plutarch, Vit. Thes. ad finem. Pausanias, I. 17. Wordsworth, Athens and Attica, chapter XVIII.)[1]

Donations of bread and soup were given to the poor at this festival, in memory of the political concessions made by Theseus to the people.[2]

THESMOPHORIA.

The Ladies' Eleusinia: for it was celebrated by married women only, two from every township being chosen to preside over the festival, which lasted four or five days in the month of Pyanepsion. During this time there was a procession to Eleusis, a fast-day, nocturnal mysteries, and a day of merry-making. We get a good deal of information upon the subject from the Thesmophoriazusæ of Aristophanes, in which play the ladies are introduced on one of the days of the festival deliberating how they shall punish Euripides for his abuse of the sex.

(As to Ceres being the inventress of laws, see ante, p. 288, note, and compare Virgil, Æn. IV. 58. *Legiferæ Cereri.* Cicero, De Leg. II. 14. Herodotus, II. 171.) She had a temple called Thesmophorion. (See Aristophanes, Thesm. 880.) Proserpine was associated with her in this worship, as in the Eleusinia. (Aristophanes, Thesm. 282, 286, 295.)

(See also Pausanias, I. 31. Isæus, De Ciron. Hered. 70.)

(1) Wordsworth says that "the obsequies of Theseus were solemnized with a dramatic contest of Æschylus and Sophocles;" not adverting to Bentley on Phalaris, page 241, who there shows the mistake committed by Julius Scaliger.

(2) Aristophanes, Plutus, 627.—

ὦ πλεῖστα Θησείοις μεμυστιλημένοι
γέροντες ἄνδρες ἐπ' ὀλιγίστοις ἀλφίτοις.

APPENDIX VII.

THE DRAMA.

The reader of Demosthenes should certainly know something about that drama which formed a part of the Orator's own education, and which we can see he had deeply studied; from which he and his competitors drew illustrations of their arguments not unfrequently, quoting the verses of Sophocles and Euripides (even more than we quote Shakspeare) before hearers to whom they were as household words. If Demosthenes ridicules Æschines for his murdering Attic tragedies at Colyttus, it is the bad performance and not the profession of an actor which he attacks. We know that this profession was held in esteem at Athens; Satyrus was the friend of Demosthenes himself; Neoptolemus and Aristodemus were employed as diplomatists, and were received even in foreign countries as men of distinction. We find also in the Orators numerous references to the Attic theatre and its performances. I say therefore, independently of other advantages attending a knowledge of the subject, it is far from being unimportant with reference to these Orations only. The drama is in fact a part of the history of Athens, which the reader ought to be acquainted with.

No subject indeed has been more copiously treated than that of the Greek theatre, or with a greater profusion of critical learning, beginning with Bentley and ending with Donaldson. Recommending the student to seek fuller information, if he needs it, in works of more profound research, I here propose only to give a brief account of the origin of the Attic drama, the mode of bringing out and performing plays at Athens, and a few particulars respecting the theatre itself.

That the sublime composition, which we now call tragedy, should have been derived from the rude songs chanted round the altar of Bacchus, must appear strange to those who have no knowledge of ancient history; and yet no fact in history is more certain. Upon that altar the goat was sacrificed; the singers, disguising themselves as Satyrs, presented the appearance of goats. Whether the name of tragedy was derived from either of these causes, or, as Bentley and others lay it down, from the circumstance that a goat was the prize of the best poet in the time of Thespis, I will not undertake to determine. Certain it is that tragedy signified *goat-song*.

Out of the rude singing of the Bacchanalians first came the Dithy-

ramb, a choral hymn accompanied by the flute or the lyre. The chorus, which usually consisted of fifty men, danced in a ring round the altar, and hence it received the name of *Cyclic* chorus.[1] It came soon to be composed by poets, or professional persons, who to the merriment of the old extemporal effusions added a wild poetical enthusiasm, which greatly delighted their hearers. The Dithyramb became highly popular in Greek cities; the prize of a bull was given to the best composer, and great competition was excited. Strictly it denoted a hymn in honour of Bacchus only, though Lasus of Hermione applied it in later time to subjects unconnected with Bacchus. During the course of the seventh century before Christ, from the time of Archilochus to that of Arion, the Dithyramb received divers improvements. Arion, the famous poet of Lesbos, is said to have given it the tragic style, meaning that he first composed dithyrambs of a serious and solemn kind, whereas before his time they had been always of a jovial character. He is said also to have introduced Satyrs speaking metrically, perhaps a sort of recitative, to vary the monotony of the choral music. Here however were the elements of yet further changes.

For the next thing was to introduce a solo; and the leader of the chorus was brought forward, during the intervals of the choral singing, to recite or speak something in verse to the audience, to tell them some story of Bacchus, his birth and his travels, his sufferings, miracles, and triumphs. The transition from this to a dialogue was natural and easy. An actor was brought on the scene, who conversed with the leader of the chorus: their dialogue was all about Bacchus and his adventures; but the different parts of it had at first no connexion with each other. Afterwards it was woven into a connected whole, and formed what we call a plot. Thus gradually rose the drama.

The first person who brought the actor upon the stage was Thespis, and therefore the invention of tragedy has been with some justice ascribed to him.[2] He was a native of Icaria, one of the Attic townships, from very early times devoted to the worship of Bacchus. Here, in the last half of the sixth century before Christ, he first exhibited his plays upon a wooden scaffolding erected for the occasion at the Dionysian festival. The plays were little better than extemporaneous effusions, of a rude and chiefly ludicrous descrip

(1) Aristophanes, Ranæ, 351.—

κυκλίοισι χοροῖσιν ὑπᾴδων,

which refers to the teaching of the chorus by the poet.

(2) As in the verses of Dioscorides, cited and amended by Bentley (On Phalaris in his discourse on the Age of Tragedy:—

Θέσπιδος εὕρεμα τοῦτο, τάδ' ἀγροιῶτιν ἂν ὕλαν
Παίγνια, καὶ κώμους τούσδε τελειοτέρους
Αἰσχύλος ἐξύψωσε, νεοσμίλευτα χαράξας
Γράμματα, χειμάρρῳ δ' οἷα καταρδόμενα·
Καὶ τὰ κατὰ σκηνὴν μετεκαίνισεν· ὦ στόμα πάντων
Δέξιον, ἀρχαίων ἦθά τις ἡμιθέων.

tion, Bacchus being the subject of the plot, and the chorus a band of Satyrs. None of them were ever committed to writing. Bentley has shown, that those which have come down to us under the name of Thespis were forgeries of Heraclides, a scholar of Aristotle.

Thespis was followed by Chœrilus and Phrynichus, who were indeed partly his contemporaries, and the latter his pupil. Phrynichus is said to have been the first composer of dramas having no relation to Bacchus. The audience were displeased at the novelty, and cried out, "What has this to do with Bacchus?" But they soon became reconciled to it, and found that fables about Hercules or the Centaurs could afford as much delight as those about Silenus and his Master. The chorus of Satyrs was preserved for some time, as a relic of the ancient custom: but when plays of a serious cast were exhibited, it was felt that the old-fashioned chorus was quite out of place, more especially when it had nothing to do with the plot. The poet accordingly adapted his chorus to the drama, whatever the subject might be, while, as a compensation to the God of the festival, who was not to be deprived entirely of his ancient honours, a purely Satyric drama, in which both the dialogue and the choral parts related to the history of Bacchus, was added to the performance; and it became the rule for the poet to exhibit one such piece together with three tragic, the four being called a tetralogy. Chœrilus excelled in the composition of these Satyric dramas, and Pratinas of Phlyus is said to have been their inventor: yet, as it would appear, they could hardly have differed much from the drama of Thespis. Their characteristic was the burlesque.[1] We have but one extant specimen of them, the Cyclops of Euripides.

Phrynichus was a poet of a higher order than any who preceded him. He was not only famous for the sweetness of his choral melodies,[2] but for the dramatic power which touched the feelings and roused the passions. Viewed with reference to these qualities, he better deserves to be called the father of tragedy than Thespis. He

(1) "The Athenians possessed another kind of ludicrous drama called the Satyrical, which was totally distinct from their comedy in its form and its object. It had been introduced in compliance with ancient usage for the sake of those, who in the improved state of the drama were still unwilling to lose the chorus of Satyrs, which once formed a main part of the Dionysiac entertainments: and it exhibited the highest persons of tragedy thus attended, and under circumstances which were humorously contrasted with the solemnity of their character. But this kind of burlesque could scarcely be said to have any other end than that of unbending the spectator, after his mind had been kept on the stretch by scenes of heroic action or suffering, with the sportive sallies of a mere animal nature. One of these exhibitions commonly followed each tragic performance, and it was always furnished by the tragic poet himself. It is remarkable that Æschylus was accounted no less a master of the light than of the serious drama: an effect perhaps of the very grandeur and severity of his tragic style. But there does not appear to have been any instance in which a tragic poet tried his powers in comedy." Thirlwall, History of Greece, iii. 79.

(2) To which Aristophanes alludes in the Wasps, 220.

καὶ μινυρίζοντες μέλη
ἀργαιομελησιδωνοφρυνιχήρατα.

won his first prize in the year B.C. 511. About seventeen years later he ventured to dramatise an event of the day, and brought out a piece called "The Fall of Miletus," which melted the whole audience into tears; but they fined him a thousand drachms for having reminded them of a national misfortune, and forbade the play to be ever acted again. (Herodotus, VI. 21.) Its fate may have suggested to Æschylus the writing of his Persæ, which celebrated the victories of his country over the barbarians. In general however the tragedians did not choose for their subjects the occurrences of the day, but confined themselves to the ancient legends, such as those of Troy and Thebes, Hercules, Prometheus, and the house of Pelops.

Much however remained to be done before tragedy arrived at its maturity. Phrynichus had brought women into the scene, and invented a female mask; but he carried on the whole of his dialogue, as Thespis had done, between the single actor and the chorus; and the choral songs, with their accompaniment of music and dancing, formed much the larger portion of his plays It was reserved for Æschylus to remedy these defects, and give to tragedy a more purely dramatic character—first, by the introduction of a second actor; secondly, by shortening the part of the chorus, and making it subservient to the plot. To him also the stage was indebted for sundry improvements in dress and decoration; as, for example, the painting of the scenes, in which he had the aid of the painter Agatharchus—the buskin, or high-heeled boot, which gave elevation and dignity to the actor—and a more expressive sort of mask, which in a large theatre was a point of considerable importance. The last grand innovation was made by Sophocles, and, after him, adopted by Æschylus; viz. the third actor: and this was thought by the best critics to fulfil all the requirements of the Greek drama, which turning always upon a simple story, brief in duration, and not overburdened with incidents, a greater number of players would have impeded rather than have assisted the development of the action. The fifty choristers of the Dithyramb had in the tragic chorus in the time of Æschylus, and perhaps before, been reduced to twelve. Sophocles raised them to fifteen; and that continued to be the regular number. He, like Æschylus, made improvements in scenery and dress. How by the genius of these two men tragedy was exalted in its essential characteristics as a work of art—what were the peculiar merits of each as a dramatist, and how they are to be judged either in comparison with one another, or with their rival in fame, Euripides—these and the like matters are not intended to be discussed here.

The Iambic [1] metre, brought to such perfection by these Attic

(1) Archilochus the Parian, who flourished in the early part of the seventh century before Christ, is said to have invented Iambic verse, and employed it for those bitter lampoons and libels with which he lashed his personal enemies: one of which caused Lycambes, who refused to give him his daughter in marriage according to promise to hang himself. The metre received its name from Iambe, the servant of Celeus

tragedians, has the same fitness for dialogue as our own Shakspearian verse, and was doubtless chosen for that purpose. The earlier poets, as Aristotle tells us, (Rhet. iii. 1; Poet. iv.) had employed the Trochaic tetrameter, as being a more suitable measure for their dancing Satyrs; and it is occasionally used by the great masters for quick or abrupt speeches. The Doric dialect was adopted for the songs of the chorus, on account of the celebrity which Dorian poets had acquired as the composers of Pæans and other choral hymns.[1]

The ancient history of the Satyric and Tragic drama is referred to, but not with perfect accuracy, by Horace in the well-known verses of his Ars Poetica, 220—233:

> Carmine qui tragico vilem certavit ob hircum,
> Mox etiam agrestes Satyros nudavit, et asper
> Incolumi gravitate jocum tentavit. eo quod
> Illecebris erat et gratâ novitate morandus
> Spectator, functusque sacris, et potus, et exlex.
> Verum ita risores, ita commendare dicaces
> Conveniet Satyros, ita vertere seria ludo;
> Ne quicumque deus, quicumque adhibebitur heros,
> Regali conspectus in auro nuper et ostro,
> Migret in obscuras humili sermone tabernas,
> Aut, dum vitat humum, nubes et inania captet.
> Effutire leves indigna tragœdia versus,
> Ut festis matrona moveri jussa diebus,
> Intererit Satyris paulum pudibunda protervis.

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whose jesting with Ceres led to the raillery of the Eleusinia. It was applied by Solon and Theognis to gnomic poetry, for which also, like our blank verse, it is highly suitable. See Horace, Epist. i. 19, 23.—

> Parios ego primus Iambos
> Ostendi Latio, numeros animosque secutus
> Archilochi, non res et agentia verba Lycambem.

De Arte Poeticâ, 79.—

> Archilochum proprio rabies armavit Iambo:
> Hunc socci cepere pedem grandesque cothurni,
> Alternis aptum sermonibus, et populares
> Vincentem strepitus, et natum rebus agendis.

(1) Alcman the Lydian was one of the earliest of these. He went shortly before the beginning of the seventh century to Sparta, where he composed music and hymns to be sung by the people. For anciently the chorus, including dance and song, was a part of the divine service, performed by the whole of the assembled people, or at least a considerable number of them. Both the dance and the song were then very simple. In process of time the performance became elaborate, and then it fell into the hands of a small body of persons expressly trained for the purpose, the mass of the people being spectators. A great number of poets, composing for these trained bands, sprang up in Argos, Sicyon, and other parts of Peloponnesus, all of whom wrote in the Doric dialect. Before the time of Stesichorus the chorus consisted of a uniform stanza. That poet however, who was born at Himera in Sicily, and flourished in the early part of the sixth century, invented the triple division of Strophe, Antistrophe, and Epode, which made the chorus more complicated and more difficult of execution. He is reported to have acquired the name of Stesichorus from the innovation which he introduced, his original name having been Tisias. Pindar and Simonides, who were contemporaries of Æschylus, carried lyric poetry to the highest degree of perfection. See Grote's History of Greece vol. iv, chap. 29.

And v. 275--280:

Ignotum tragicæ genus invenisse Camenæ
Dicitur, et plaustris vexisse poëmata Thespis,
Quæ canerent agerentque peruncti fæcibus ora.
Post hunc personæ pallæque repertor honestæ
Æschylus et modicis instravit pulpita tignis,
Et docuit magnumque loqui nitique cothurno.

Sir Edward Lytton Bulwer, whose genius has illustrated so many other subjects, in his work on the "Rise and Fall of Athens" discourses at some length upon this; and the reader will not be displeased if I present him with a brief extract, (taken from vol. ii. page 14):

"We have remarked the more familiar acquaintance with the poems of Homer which resulted from the labours and example of Pisistratus. This event combined with other causes to create with apparent suddenness, amongst a susceptible and lively population, a general cultivation of taste. The citizens were brought together in their hours of relaxation by the urbane and social manner of life under porticos and in gardens, which it was the policy of a graceful and benignant tyrant to inculcate: and the native genius, hitherto dormant, of the quick Ionian race, once awakened to literary and intellectual objects, created an audience even before it found expression in a poet. The elegant effeminacy of Hipparchus contributed to foster the taste of the people—for the example of the great is nowhere more potent over the multitude than in the cultivation of the arts. Patronage may not produce poets, but it multiplies critics. Anacreon and Simonides, introduced amongst the Athenians by Hipparchus, and enjoying his friendship, no doubt added largely to the influence which poetry began to assume. The peculiar sweetness of those poets imbued with harmonious contagion the genius of the first of the Athenian dramatists, whose works are lost to us, though evidence of their character is preserved. About the same time the Athenians must necessarily have been made more intimately acquainted with the Lyric poets of Ionia and the isles. Thus it happened that their models in poetry were of two kinds, the Epic and the Lyric, and in the natural connexion of art it was but the next step to accomplish a species of poetry which should attempt to unite the two. Happily at this time Athens possessed a man of true genius, whose attention early circumstances had directed to a rude and primitive order of histrionic recitation:—Phrynichus the poet was a disciple of Thespis the mime: to him belongs this honour, that out of the elements of the broadest Farce he conceived the first grand combinations of the Tragic Drama.

"From time immemorial, as far back perhaps as the grove possessed an altar and the waters supplied a reed for the pastoral pipe, Poetry and Music had been dedicated to the worship of the Gods of Greece. At the appointed season of festival to each several Deity, his praises

were sung, his traditionary achievements were recited. One of the divinities last introduced into Greece, the mystic and enigmatical Dionysos or Bacchus, received the popular and enthusiastic adoration naturally due to the God of the vineyard and the Unbinder of galling cares. Dithyrambs, or wild and exulting songs, at first extemporaneous, celebrated the triumphs of the God. By degrees the rude hymn swelled into prepared and artful measures, performed by a chorus that danced circling round the altar; and the Dithyramb assumed a lofty and solemn strain adapted to the sanctity of sacrifice and the emblematic majesty of the God. These ceremonial songs received a wanton and wild addition, as, in order perhaps more closely to represent and personify the motley march of the Liber Pater, the chorus-singers borrowed from the vine-browsing goat, which they sacrificed, the hides and horns which furnished forth the merry mimicry of the Satyr and the Faun. Under licence of this disguise the songs became more obscene and grotesque, and the mummers vied with each other in obtaining the applause of the rural audience by wild buffoonery and unrestricted jest. Whether as the prize of the winner or as the object of sacrifice, the goat was a sufficiently important personage to bestow upon the exhibition the homely name of Tragedy, or Goat-song, destined afterwards to be exalted by association with the proudest efforts of human genius. And while the Dithyramb, yet amidst the Dorian tribes, retained the fire and dignity of its hereditary character; while in Sicyon it rose in stately and mournful measures to the memory of Adrastus the Argive hero; while in Corinth, under the polished rule of Periander, Arion imparted to the antique hymn a new character and a more scientific music, gradually in Attica it gave way before the familiar and fantastic humours of the Satyrs, sometimes abridged to afford greater scope to their exhibitions, sometimes contracting the contagion of their burlesque. Still however the reader will observe that the Tragedy or Goat-song consisted of two parts, first the exhibition of the mummers, and secondly the Dithyrambic chorus moving in a circle round the altar of Bacchus. It appears on the whole most probable, though it is a question of dispute and uncertainty, that not only this festive ceremonial, but also its ancient name of Tragedy, had long been familiar in Attica, when, about B.C. 535, a skilful and ingenious native of Icaria, an Attic village in which the Bacchic rites were celebrated with peculiar care, surpassed all competitors in the exhibition of these rustic entertainments. He relieved the monotonous pleasantries of the Satyric chorus by introducing, usually in his own person, an histrionic tale-teller, who from an elevated platform, and with the lively gesticulations common still to the popular narrators of romance on the mole of Naples or in the bazaars of the East, entertained the audience with some mythological legend. It was so clear that during this recital the chorus remained unnecessarily idle and superfluous, that the next improvement was as natural in itself as it was important

in its consequences. This was to make the chorus assist the narrator by occasional question or remark.

"The choruses themselves were improved in their professional art by Thespis. He invented dances, which for centuries retained their popularity on the stage, and is said to have given histrionic disguise to his reciter, at first by the application of pigments to the face, and afterwards by the construction of a rude linen mask.

"These improvements, chiefly mechanical, form the boundary to the achievements of Thespis. He did much to create a stage, little to create tragedy in the proper acceptation of the word. His performances were still of a ludicrous and homely character, and much more akin to the comic than the tragic. Of that which makes the essence of the solemn drama of Athens, its stately plot, its gigantic images, its prodigal and sumptuous poetry, Thespis was not in any way the inventor. But Phrynichus, the disciple of Thespis, was a poet; he saw, though perhaps dimly and imperfectly, the new career opened to the art; and he may be said to have breathed the immortal spirit into the mere mechanical forms, when he introduced poetry into the bursts of the chorus and the monologue of the actor. Whatever else Phrynichus effected is uncertain. The developed plot, the introduction of a regular dialogue through the medium of a second actor, the pomp and circumstance, the symmetry and climax of the drama, do not appear to have appertained to his earlier efforts; and the great artistical improvements which raised the simple incident to an elaborate structure of depicted narrative and awful catastrophe are ascribed not to Phrynichus, but to Æschylus. If the later works of Phrynichus betrayed these excellencies, it is because Æschylus had then become his rival, and he caught the heavenly light from the new star which was destined to eclipse him. But everything essential was done for the Athenian tragedy when Phrynichus took it from the Satyr, and placed it under the protection of the Muse; when, forsaking the humours of the rustic farce, he selected a solemn subject from the serious legends of the most vivid of all mythologies; when he breathed into the familiar measures of the chorus the grandeur and sweetness of the lyric ode; when, in a word, taking nothing from Thespis but the stage and the performers, he borrowed his tale from Homer and his melody from Anacreon. We must not then suppose, misled by the vulgar accounts of the Athenian drama, that the contest for the goat and the buffooneries of Thespis were its real origin: born of the epic and the lyric song, Homer gave it character, and the lyrists language. Thespis and his predecessors only suggested the form to which the new-born poetry should be applied."

Comedy was evolved from the Phallic chorus much in the same way that Tragedy was from the Dithyrambic. Wherever the worship of Bacchus was carried, it was accompanied with both these kinds of hymns. Each of them was merry and joyous; but while the Dithyrambic united enthusiasm with merriment, the Phallic was of a gross

description; for, as the name itself denotes, the singers carried the Phallus about with them, and their song, whose themes were the loves and loose adventures of the son of Semele, was accompanied with motions and gesticulations appropriate to the subject. They at the same time diverted the company with that coarse jesting and bantering which had become the regular usage of the festival. It was in the villages that these Phallic hymns were most popular, while the Dithyramb was the favourite in towns and cities, where it became refined and elevated, as before mentioned.

The district of Icaria, the same where Thespis made his first rude essays in tragedy, about forty years before his time witnessed an attempt to dramatise the Phallic mummeries: nor is it unlikely that this gave the first idea of tragic drama; for the difference between tragic and comic performance was but slight originally. One Susarion, a native of Megara, in which country amusements of this kind had been practised some time before, brought his Phallic chorus to the Attic village; where, being mounted in a wagon, the leading chorister, perhaps the author himself, performed a laughable farce much in the fashion of our merryandrews. The experiment was repeated: it became customary to prepare little farcical pieces to be acted at the festival, and a basket of figs and a cask of wine were given for the prize. As the performance took place during the interval of the Phallic hymn, it got the name of *Comœdia*, the *Song of the Mummers*, or, according to the derivation adopted by Bentley, *Village-Song*. And because the actor smeared his face with lees of wine, it was sometimes called *Trugodia*.[1]

The farces of Susarion, like the tragedies of Thespis, were mere ephemeral productions, not given to writing. They were too coarse and licentious to be encouraged in the city of Athens, while governed by its ancient aristocracy: and much less would they have suited the grave policy of Solon or Pisistratus. Comedy therefore was for a great many years left to exhibit itself in its rude form to the Attic peasants. Meanwhile it was developed in Sicily by the genius of Phormis and Epicharmus; the latter of whom is said to have been its inventor, because he was the first person whose pieces were ever given to the world in writing.[2] He was a native of Cos, from which he was removed in early infancy to Megara, where he probably learned th

(1) Athenæus, ii. 40. Aristophanes, Acharn. 496.—

μή μοι φθονήσητ', ἄνδρες ὦ θεώμενοι,
εἰ πτωχὸς ὢν ἔπειτ' ἐν 'Αθηναίοις λέγειν
μέλλω περὶ τῆς πόλεως τρυγῳδιαν ποιῶν.
τὸ γὰρ δίκαιον οἶδε καὶ τρυγῳδία.

(2) Theocritus, Epigr. 17.—

"Ατε φωνὰ Δώριος, χ' ωνὴρ ὁ τὰν κωμῳδίαν
Εὑρὼν 'Επίχαρμος.

Horace compares his style to that of Plautus: Epist. II. i. 57.—
Dicitur Afranî toga convenisse Menandro.
Plautus ad exemplar Siculi properare Epicharmi.

art of dramatic composition. He afterwards lived at Syracuse, under the protection of Hiero, and acquired fame by his burlesques of the ancient mythology, and by caricaturing the manners of the day. The Pythagorean philosophers were ridiculed by him upon the stage. Comedy appears to have succeeded very well in Sicily, the people of which were always of a lively and facetious turn. Both humour itself and the faculty of enjoying it are natural gifts: and Cicero, who had had opportunities of studying the Sicilian character, speaks of the people to this effect: (De Oratore, II. 54.)

"Suavis autem est, et vehementer sæpe utilis jocus et facetiæ: quæ, etiamsi alia omnia tradi arte possunt, naturæ sunt propria certe, neque ullam artem desiderant. In quibus tu longe aliis meâ sententiâ, Cæsar, excellis: quo magis mihi etiam testis esse potes, aut nullam esse artem salis, aut, si qua est, eam nos tu potissimum docebis. Ego vero, inquit Cæsar, omni de re facetius puto posse ab homine non inurbano, quam de ipsis facetiis, disputari. Itaque cùm quosdam Græcos inscriptos libros esse vidissem de ridiculis, nonnullam in spem veneram, posse me aliquid ex istis discere: inveni autem ridicula et salsa multa Græcorum: nam et Siculi in eo genere, et Rhodii, et Byzantii, et præter ceteros Attici excellunt: sed qui ejus rei rationem quandam conati sunt artemque tradere, sic insulsi exstiterunt, ut nihil aliud eorum, nisi ipsa insulsitas, rideatur. Quare mihi nullo videtur modo doctrinâ ista res posse tradi."

Nearly a century after the first appearance of Susarion in Attica, when democracy had been firmly established by the Clisthenean institutions, the broad Megarian farce was introduced at Athens. Chionides is mentioned as having been the earliest of the composers. He was followed by Magnes and some others, of whom we know nothing beyond their names. At length in the age of Pericles that extraordinary kind of drama, which is called the Old Attic Comedy, was gradually raised to its highest perfection under the hands of Crates, Cratinus, Eupolis, and Aristophanes.

The plays of this comedy are said to have been three hundred and sixty-five in number. Eleven plays of Aristophanes and fragments of his contemporaries have been handed down to us: quite enough remains to enable us to judge of its character. It was an entertainment completely in harmony with the drunken festivities of the Dionysian carnival. The licence enjoyed by the mummers and merryandrews of the vintage was transferred in the fullest possible manner to the poet who diverted the assembled people in the state-theatre of Athens. What the Athenians called comedy, we should rather call broad farce and extravaganza; and even such names would give us no idea of what it was. Its plots were the wildest and most eccentric fictions; its scenes, incidents, and language were not merely gross and indecent, but (as we should consider) blasphemous; and yet all was sanctioned by the privilege of the festival. Ridicule both of Bacchus and his fellow-deities was consistent with the intention to

do him honour. If such liberties might be taken with the Gods, mortals were not likely to escape. It was on the comic stage that democracy indulged in the most unbounded freedom, allowing any citizen, rich or poor, high or low, to be attacked and assailed, either in his public or private character, with impunity. Unlike the Tragic and Satyric drama, which took their plots generally from legends of olden time, Comedy chose for her subjects the topics and events of everyday life, the actions and characters of people who were familiarly known to the audience. And not only did she hold up to ridicule the vices and follies of private life, but even the conduct of public men and their acts of administration. Those statesmen to whom the poet was opposed in politics fell chiefly under his lash, as might be expected. His animadversions were an extraordinary admixture of truth and seriousness with scurrility and absurdity. In short, the comedian was the great censor and satirist of the day, uniting in himself the functions of the pantomimic droll, the fool of the Middle Ages, the journal and Charivari of our own time. Democracy herself was not safe from the assaults of her indulged children. In the Demus of Aristophanes the Athenian people were amused to behold an impersonation of themselves. And what wonder? If Bacchus could endure to be laughed at upon his own stage, why should his votaries be more particular?

That the leading politicians of Athens occasionally winced under the castigations of the comedian, is not to be doubted. Pericles himself, with all his integrity and magnanimity, must have keenly felt the stinging blows of Cratinus. We know that Cleon was greatly exasperated by the Babylonians of Aristophanes; who however was not deterred from bringing him on the stage yet more offensively in his play of the Knights. In the year B.C. 440, when Pericles was at the height of his power, a law was passed to prohibit comic performance; but this after two or three years was repealed. One or two more attempts were made to restrain it, but did not succeed. With the exception of a short period during the interregnum of B.C. 411, the Old Comedy continued in the exercise of its full liberty until the close of the Peloponnesian war.

After the expulsion of the Thirty Tyrants, however, it was replaced by one of a less licentious kind, which has received the name of the Middle Comedy, because it was a transition from the coarseness of an early age to the refinement of a later. The spirit of the Athenian people did not then seek the wild excitement, or tolerate the intemperate freedom, of the days of Pericles: and the comedian, instead of bringing public characters upon the stage and indulging in gross and open personalities, contented himself with a more disguised censorship, with satire of a more general nature, with literary criticism and parody. There was no lack of poets under this regime. Athenæus tells us (viii. 336.) that he had read upwards of eight hundred plays of the Middle Comedy. The most celebrated writers of it were

Antiphanes and Alexis. It lasted till the overthrow of Athenian independence at Chæronea.

To this succeeded the New Comedy, which, quitting entirely the regions of personal satire and caricature, applied itself (like that of the present day) to the invention of amusing plots, in which nature and real life were imitated, but the persons and the incidents were always fictitious. Between such plays and the Aristophanic there is a much greater difference than between genteel comedy and farce. The principal comedians of this last period, which lasted less than a century, were Menander, Philemon, and Diphilus. Fragments of them only remain: but we can form a good idea of their style from the plays of Plautus and Terence, especially those of the latter, which are translations of Menander.

Horace, who disliked anything approaching to broad farce or scurrility, condemns the licentiousness of the Aristophanic drama, while he applauds the talents and vigour of the writers.

Thus, Satire I. 4. 1.—

> Eupolis atque Cratinus Aristophanesque poetæ,
> Atque alii quorum Comœdia prisca virorum est,
> Si quis erat dignus describi, quod malus aut fur
> Aut mœchus foret aut sicarius aut alioqui
> Famosus, multâ cum libertate notabant.

Ars Poetica, 281.—

> Successit vetus his Comœdia, non sine multâ
> Laude; sed in vitium libertas excidit, et vim
> Dignam lege regi; lex est accepta, chorusque
> Turpiter obticuit, sublato jure nocendi.

To discuss the merits and demerits of Aristophanes and his contemporaries would lead us too far; but we may take a glance at what Mitchell says upon the matter in the preliminary discourse to his translation:

"The Old Comedy, as it is called, in contradistinction to what was afterwards named the Middle and the New, stood in the extreme relation of contrariety and parody to the tragedy of the Greeks—it was directed chiefly to the lower orders of society at Athens; it served in some measure the purposes of the modern journal, in which public measures and the topics of the day might be fully discussed; and in consequence the dramatic personæ were generally the poet's own contemporaries, speaking in their own names and acting in masks, which, as they bore only a caricature resemblance of their own faces, showed that the poet, in his observations upon them, did not mean to be taken literally to his expression. Like tragedy, it constituted part of a religious ceremony; and the character of the Deity to whom it was more particularly dedicated was stamped at times pretty visibly upon the work which was composed in his honour. The Dionysian festivals were the great carnivals of antiquity—they celebrated the returns of vernal festivity or the joyous vintage, and were in consequence the great holidays of Athens—the seasons of universal relaxation. The comic poet was the high priest of the fea-

tival; and if the orgies of his Divinity (the God of wine) sometimes demanded a style of poetry which a Father of our Church probably had in his eye when he called all poetry the *devil's wine*, the organ of their utterance (however strange it may seem to us) no doubt considered himself as perfectly absolved from the censure which we should bestow on such productions: in their composition he was discharging the same pious office as the painter, whose duty it was to fill the temples of the same Deity with pictures which our imaginations would consider equally ill-suited to the habitations of Divinity. What religion therefore forbids among us, the religion of the Greeks did not merely tolerate, but enjoin. Nor was the extreme and even profane gaiety of the Old Comedy without its excuse. To unite extravagant mirth with a solemn seriousness was enjoined by law even in the sacred festival of Ceres. The feast of Bacchus retained the licence without the embarrassment of the restraint. While the philosophers therefore querulously maintained that man was the joke and plaything of the Gods, the comic poet reversed the picture, and made the Gods the plaything of men: in his hands indeed everything was upon the broad grin; the Gods laughed, men laughed, animals laughed. Nature was considered as a sort of fantastic being, with a turn for the humorous, and the world was treated as a sort of extended jest-book, where the poet pointed out the bon-mots, and acted in some degree as corrector of the press. If he discharged this office sometimes in the sarcastic spirit of a Mephistophiles, this too was considered as part of his functions. He was the Terræ Filius of the day, and lenity would have been considered not as an act of discretion, but as a cowardly dereliction of duty.

"Of the species of comedy thus described, whoever was the inventor, whether Epicharmus or Phormis, Aristophanes was the great finisher and perfecter. With an ear tuned to the nicest modulations of harmony, and with a temperament apparently most joyous and joyful, he was just fitted for the entertainment of a people, of whom Philip of Macedon, when he compared them to the Hermaic statues so common in their streets, drew in a few words one of the most happy and characteristic descriptions of a people which is upon record. That gaiety which is so well adapted to a nation of quick natural parts, and which has so few charms for persons of cultivated understandings, the gaiety which consists in painting pleasantly the dulness of the understanding (*la bêtise*) and in inspiring buffoonery; of that gaiety, which has been made equally the basis of Italian and Grecian comedy, Aristophanes was preeminently the master. Music, dancing, metre, decoration—all that union of amusement which the Greeks, a seeing and not a reading public, (this fact cannot be too much in our minds when we are talking of their dramatic literature,) required of their writers for the stage—Aristophanes seemed to have improved: the Muse of comedy herself he left as he found her, a beautiful Titania, matchless in her outward proportions, but with

a spell upon her affections, and showering favours, which should have been better bestowed, upon an ass's head with Bottom the weaver below it."

It remains only to give an account of the theatre itself and its arrangements.

For a long time a wooden theatre, erected only for the time of the festival, was sufficient for the Athenian drama. At length in the year B.C. 500, when Æschylus exhibited his first tragedy, the building overloaded with spectators broke down. It was then resolved to build a theatre of stone. The rock of the Acropolis was made use of for that purpose. Under its southern wall, at the eastern extremity, tiers of seats rising one above another were scooped into the rock. Each tier formed a large segment of a circle, the diameter increasing with the ascent. These tiers of seats, with stairs and passages for convenient access, formed that portion of the theatre which was occupied by the spectators, and was, according to a less comprehensive meaning of the term, called the *theatre*.

The circular area in the centre, which lay a little below the lowest tier of benches, was called the Orchestra. It was the floor upon which the chorus performed their dances, and for that purpose was covered over with smooth boards. In the centre was the altar of Bacchus, called Thymele, which reminded people of the ancient times, when the dithyramb was performed in a ring round the altar; though now its principal use was as a platform for musicians and a prompter to stand upon.

The stage (Proscenium) was outside of the orchestra, forming the remainder of the circle of which the orchestra was a segment. It was elevated a little above it. The background was terminated by the Scena, the wall or frame upon which the scenery of the drama was delineated, and which, by the rolling of a curtain underground (not pulling up, as with us), was exhibited to the spectators. With the exception of a covered portico over the highest tier of seats, the whole of this theatre was open to the sky. The acoustic arrangements are said to have been skilfully contrived.

The actors entered upon the stage through the Scena by three different doors, assigned to the different characters. The chorus advanced into the orchestra by side passages, in files three or five deep, and arranged themselves so as to be in readiness for the choral performance: the Coryphæus or leader, who was one of the dramatis personæ, taking a station not far from the Thymele, from which he could carry on his part of the dialogue.

Although we, in reading Athenian tragedies at the present day, are apt to regard the choral parts with less interest than the dramatic, especially those dithyrambic-like effusions which have little or nothing to do with the plot, and although even at Athens the chorus under Æschylus and his successors had come to hold a comparatively subordinate place in the drama, yet it still possessed a great charm for the

Athenian audience, and indeed one fully equal to the drama itself. Independently of its religious associations, the song of the chorus was accompanied with music and dancing, both of an elaborate composition. The instruments were the harp and the flute. The dance was complicated: Attic tragedians had adopted the antistrophic form of Stesichorus: and, to guide the dancers in their evolutions, lines were marked on the boarded floor of the orchestra. The difference between the styles of tragic and comic dancing was as great as that between tragedy and comedy themselves. The former (called Emmeleia) was stately and graceful; the latter (Chordax) was ludicrous and indecent. While the tragic chorus consisted usually of fifteen, the comic were four-and-twenty. To train these choristers was by no means the least expensive part of bringing out a play. The poet had to apply for a chorus to the Archon, and the cost was defrayed (as we have seen) by the Choragus. In the middle comedy the chorus after a time was altogether omitted.

The wearing of masks by the actors has been already alluded to. This practice, which was originally derived from the rude disguises of the mummers, was afterwards continued as a matter of necessity, on account of the size of the theatre, which made it impossible for the majority of the spectators to distinguish the natural features. A mask which enlarged the face remedied this defect. In tragedy there was an additional reason for adopting the disguise. Its principal characters were the Gods and Heroes of the ancient legends, whom it would hardly have seemed proper to represent on the stage like ordinary human beings. As the cothurnus elevated the person of the actor, so the mask gave a superhuman expression to his countenance. No little skill was applied to the fashioning this important part of the dramatic costume, and we have seen that Æschylus himself was the author of improvements in it. The manufacture of masks became a business: each character, as Apollo, Achilles, a Youth, a Maiden, &c., had its appropriate mask, which was easily recognized by the people. There was not the same necessity for disguising the chorus, who were nearer to the spectators, and were arrayed for dancing rather than for acting: they therefore generally appeared without masks.

In the old comedy the masks were often extremely grotesque and absurd, just as they are in an English pantomime; though for ordinary personages they were tolerably faithful to life. And instead of the dignified cothurnus, the soccus, or slipper of common life, was used to tread the stage with. Where characters of the day were introduced, it was desirable to have as good a likeness as possible, either by way of caricature or otherwise. It is said that, when Aristophanes was about to exhibit Cleon upon the stage, no artist dared to make his mask, and no actor would undertake to play the character; the poet was obliged to perform it himself, and rubbed lees of wine upon his face, to imitate the flushed and bloated countenance of the demagogue.

The exact dimensions of the Attic theatre (which was never quite

completed till the year B.C. 340) are not known. That it was built on a large scale as compared with modern playhouses, is beyond a doubt. It has been supposed to have been capable of holding thirty thousand persons: though this statement, founded chiefly on certain passages of Plato and Dicæarchus, has been called in question by Wordsworth, (Athens and Attica, chapter XIII.,) who alleges that the site of its ruins gives no idea of its magnitude. At all events it was large enough to accommodate a large proportion of the people of Athens. The drama was intended for the multitude, and it was in accordance with the spirit of the constitution, that every facility should be afforded for their enjoying the spectacle. In the time of the old wooden theatre the admission was free to all citizens; but the crushing for places led to confusion and danger; and after the building of the stone theatre it was resolved that a price should be charged for entrance. This was fixed at two obols, and was received by the lessee or manager of the theatre, (called *Theatrones* or *Architecton*,) who for that price undertook to keep it in repair and ready for use. Pericles afterwards passed a law, that the two obols should be given to the poorer citizens out of the treasury, and so the admission became again virtually free. Many who could afford to pay for themselves used to apply for the dole of two obols; but, as a general rule, the rich paid for their seats, and sometimes gave as much as a drachm for a seat of a better class. There were certain places reserved for official personages and others, as for the Members of the Council, Archons, Generals, Ambassadors. Any one who took a place belonging to another might, as we have learned from the Oration against Midias, be removed by the police. (See ante, p. 124.)

The plays began at an early hour in the morning, and lasted the whole of the day. Such was the general eagerness to be present, that many would come long before the time to secure a good place. Some indeed, to save their two obols, would take their chance of getting a seat at a later hour; for after a certain time no money was demanded for entrance. Those that wished to see the whole performance brought wine and provisions with them; especially the ladies; for they were permitted to see tragedies, but not comedies, while boys were allowed to be present at both. At the Lenæan festival, which was in the month Gamelion, (January,) the spectators were provided with cloaks; for, the theatre being roofless, they were exposed both to wind and rain. The more luxurious brought cushions to sit upon. Æschines reproaches Demosthenes, because, when he accompanied the Macedonian ambassadors to the play, he did not neglect this little addition to their comfort. The conduct of the spectators during the entertainment, their expressions of approbation and displeasure, by shouting, clapping, hissing, &c., were pretty much the same as in our own country, but partook somewhat more of democratic freedom. Æschines, if we may believe his rival, was pelted not unfrequently with figs and olives for his bad acting; though this seems to have

been by a provincial audience. (See volume II. p. 97; and, on the whole subject of theatre-going at Athens, see Becker's Charicles, Excursus to Scene X.)

While the performances of an Athenian drama had much that was in common with our own, there were peculiar causes which made it a scene of much stronger excitement—such as the festive occasion, the national character of the exhibition, the constant appeal to the popular sentiment of religion and patriotism. The very fact of the people sitting under the open sky, while it exposed them to some inconvenience, was attended also with advantages; as Wordsworth has well pointed out in the chapter of his Athens and Attica last referred to.

"Whatever its capacity might have been, the Theatre of Athens did not mainly depend on its dimensions for the attractions which it possessed. Here on this gentle slope, with the Parthenon and the Acropolis immediately above them, with the valley of the Ilissus not far beneath, at the beginning of spring, in a transparent atmosphere beneath a clear sky, with a gentle breeze blowing on them from the sea, here the spectators sat to be charmed by the mixed enchantments of nature and art which the Athenian Theatre supplied, both in exquisite perfection.

"The dramatic influence of this union, of this interweaving (as it were) of natural scenery with that of the theatre itself, deserves here a moment's consideration.

"It is evident that it furnished the scenic poet with a greater range of subjects and with greater freedom in treating them. To one of these poets it gave free scope to his bold conceptions, and supplied objects for his imagination to deal with. It will be found, that most of the metaphorical expressions of Æschylus are derived from objects which were visible to the audience, while they listened to the recital of those expressions in the theatre. Seas and storms, building of ships and their navigation, feeding of flocks on the hills, hunting in the woods, fishing in the sea, walls and fortifications, the Stadium and its course; these are the usual, the simple and natural sources from which Æschylus derived his copious streams of figurative diction. They were all either in the immediate field of view, or in near connexion with that theatre where the language they enriched was uttered. They were almost the natural elements of which the poetical atmosphere of that theatre was composed: the dramatic poet breathed them as his native air.

"Similarly Sophocles speaks with a local truth when in the Theatre at Athens he says of the island of Salamis,[1]

O noble Salamis, thou indeed
Buoyed on the wave dost happy dwell
Conspicuous ever in the eyes of men.

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[1] Ὦ κλεινὰ Σαλαμὶς, σὺ μέν που
ναίεις ἁλίπλαγτος εὐδαίμων
πᾶσιν περίφαντος ἀεί.

Ajax, 596

" The peaked hills of Salamis stood in the western horizon, like a picture drawn to illustrate the poem with their visible beauty.

" To Euripides again this combination afforded the most favourable field for expressing the tenets of his own peculiar philosophy. While Æschylus exulted in the rich variety of natural objects before him, Euripides laboured to blend them into one: but unless the sky had been open, and the air free about him, he could never have here pronounced with the same energy as he did,[1]

> Seest thou the abyss of sky that hangs above thee,
> And clasps the earth around in moist embrace?
> This to be Jove believe, this serve as God.

His creed would have remained a dry theme of abstract speculation, and never become instinct with the life of poetic sensation.

" To the dramatic poets of Athens not as inventors merely, but as addressing an audience for great moral and social purposes, the position of the theatre gave great advantages. To select one: Being placed immediately under the Acropolis, being seated (if we may so say) on the very steps of that great natural temple, for such to Athenians their Acropolis was, the audience were thus immediately connected with what was most sacred and beautiful in the Athenian city. They were themselves almost consecrated by such a union. Just above them was the Temple of Minerva and the Statue of the Jupiter of the Citadel.[2] They were sitting thus, as the poet expressed it, under the wings of Gods.[3]

" To apply the same observation to another department of dramatic literature: It is evident that to the peculiar advantages arising from its position and character, which the Theatre of Athens possessed, is to be ascribed in a great degree the successful daring of the Aristophanic plays. To cite instances: How in the confinement of a modern theatre could we imagine a Trygæus soaring above the sea in an aerial excursion? There his journey would be reduced to a mere mechanical process of ropes and pullies, and would be inexorably baffled by the resistance of the roof. But in the Athenian Theatre the sky itself was then visible, whither he was mounting, and in which he was placed by the simple machinery of the imagination of the spectators, to which free play was given by the natural properties of the theatre itself. How again, if pent in by the limits of a modern theatre, could the birds be imagined to build their aerial city? How

(1)
> ὁρᾷς τὸν ὑψοῦ τόνδ' ἄπειρον αἰθέρα
> καὶ γῆν πέριξ ἔχονθ' ὑγραῖς ἐν ἀγκάλαις;
> τοῦτον νόμιζε Ζῆνα, τόνδ' ἡγοῦ θεόν.
>
> Eurip. Fragment.

(2) Ζεὺς Πολιεύς. Pausanias, i. 24.

(3) Æschylus, Eumenid., 953.

> χαίρετ' ἀστικὸς λεώς
> ἴκταρ ἥμενοι Διὸς
> Παρθένου φίλας φίλοι,
> σωφρονοῦντες ἐν χρόνῳ,
> Παλλάδος δ' ὑπὸ πτεροῖς
> ὄντας ἅζεται Πατήρ.

could the clouds have come sailing on the stage from the heights of a neighbouring Parnes? How in such a position could the future minister of Athens have surveyed from the stage, as he did, the natural map of his own future domains, the Agora, the harbours, the Pnyx, and all the tributary islands lying in a group around him?

These conceptions and such as these are characteristic of the genius of the Athenian drama: on a modern stage they would be forced and inadmissible: here, under an open sky, with the hills of Athens around him, and a part of the city beneath him, they would seem to the spectator to be in some sense the creations of the place, no less than of the poet himself."

APPENDIX VIII.

CRIMINAL PROCEDURE.

The invention of the science of jurisprudence has been attributed (not without some reason) to the Athenians.[1] Considering the antiquity of their laws, we are astonished at their variety and their excellence. Besides a code of statutes remarkable for the care and foresight with which they were drawn up, whether that be due to Solon alone, or to Solon jointly with succeeding legislators, we find established in the flourishing period of their republic a complex judicial system, with prescribed forms of action and rules of pleading and practice, so nice and artificial as to remind one of that which our Norman ancestors, full of forensic subtlety, handed down to us. Meier, Schömann, Platner, and other German authors have written copious treatises on the process of the Athenian courts. Out of the scanty materials furnished by a few ancient books, they have done for Attic law what Blackstone, Tidd, and Archbold have for the English. And to such works I am in great measure indebted for the brief outline which I present to the reader.

It will be found convenient to take separately the two great divisions to which we are accustomed in our own country, of civil law and criminal. The line of demarcation between them was not indeed quite the same at Athens as in England: for there were some offences which, though they are treated as purely criminal with us, might at Athens be made the subject of civil proceedings, as theft and perjury: again there were some things punishable as crimes at Athens and not so in England; and *vice versâ;* as might be expected. There was

(1) To Athens, says Ælian, mankind were indebted for the olive, the fig, and the administration of justice; likewise for athletics and chariot-driving. Δίκας δοῦναι καὶ λαβεῖν εὗρον Ἀθηναῖοι πρῶτοι. Var. Hist. iii. 38.

also much in the judicial system of the Athenians that was common both to civil and criminal charges; and with them, as with us, it frequently happened that the aggrieved party had the option of proceeding either civilly or criminally against the offender. Still the main distinctions between crime and civil injury, which are founded on the principles of human society, were observed both in the statutory code and the judicial practice of the Athenians.[1]

We will begin with the criminal law; noticing the different classes of offences, the punishments with which they were respectively visited, the various tribunals before which they were brought, and the different methods of proceeding.

As a general rule it may be laid down, that every criminal charge was tried before a jury taken from the body of the people, and presided over by a particular magistrate having cognizance of the offence. The case of homicide furnishes an exception; in this the ancient tribunals, which were anterior to the establishment of the jury system, maintained their jurisdiction. And to this our attention will first be directed.

MURDER, HOMICIDE, ETC.

This whole department of crime was anciently under the jurisdiction of the Areopagus. The court, composed of men taken from the best families of Attica, was always famous for the justice of its decisions—so at least the Athenians boasted;—but, when it passed sentence of condemnation on the criminal, it had no option but to punish him with death. Draco[2] first mitigated the rigour of this law, somewhere about the year B.C. 621, by establishing a board of fifty-one judges, taken from families of high birth, and called Ephetæ, with power to try cases of accidental or justifiable homicide, and deal with them on equitable principles.[3] Solon, who repealed other ordi-

(1) See the reasoning of Demosthenes in the Oration against Midias, ante, pp. 65, 71, 75, 77, 80, 81, 108, 124.

(2) "Draco did not meddle with the political constitution, and in his ordinances Aristotle finds little worthy of remark, except the extreme severity of the punishments awarded: petty thefts or even proved idleness of life being visited with death or disfranchisement. But we are not to construe this remark as demonstrating any special inhumanity in the character of Draco, who was not invested with the large power which Solon afterwards enjoyed, and cannot be imagined to have imposed upon the community severe laws of his own invention. Himself of course an Eupatrid, he set forth in writing such ordinances as the Eupatrid archons had before been accustomed to enforce without writing in the particular cases which came before them; and the general spirit of penal legislation had become so much milder during the two centuries which followed, that these old ordinances appeared to Aristotle intolerably rigorous. Probably neither Draco nor the Locrian Zaleucus, who somewhat preceded him in date, were more rigorous than the sentiment of the age: indeed the few fragments of the Draconian tables which have reached us, far from exhibiting indiscriminate cruelty, introduce for the first time into the Athenian law mitigating distinctions in respect to homicide, founded on the variety of concomitant circumstances." Grote's History of Greece, iii. 101. See Ælian's Various History, v. 15; viii. 10.

(3) Some have supposed they derived their title from the word ἔφεσις, *appeal*, because there was an appeal to their more equitable jurisdiction from the rigour of the

nances of Draco, which are said to have been of too severe a character, preserved his regulations in regard to homicide, and did not disturb the constitution of the Ephetæ, though he remodelled that of the Areopagus in the manner already mentioned. (Vol. II. Appendix III.) After Solon's time then the law stood as we find it laid down in the Oration against Aristocrates. (Ante, p. 174.)

The Areopagus had cognizance of murder, of wounding with malicious intent, of arson, and of poisoning.

Here we may remark that by the terms of the Athenian law murder and poisoning were distinguished. No such distinction exists in our law, by which poisoning is treated simply as murder. Yet there was a time when a difference was made with us. On account of the detestable nature of the crime of poisoning, a statute was passed in the reign of Henry VIII., which made it treason, and subjected it to a painful and lingering punishment, namely, boiling to death: but the statute was repealed in the first year of Edward VI. (See Blackstone's Commentaries, IV. 196.)

The Areopagites, as all the other judges of homicide, sat in the open air, to avoid being under the same roof with the criminal. The King-Archon brought the case into court, and presided with his crown taken off. The proceedings were conducted with the utmost solemnity. A solemn oath was taken by the accuser, setting forth his relationship to the deceased, and imprecating a dreadful curse upon himself and his family, if the charge were not true.[1] The accused swore to his innocence in like manner; and an oath equally solemn was taken by the witnesses. Each party was allowed to address the court twice, and, as it would seem, upon two consecutive days: anciently they were not allowed the assistance of an advocate, though in later times this rule was relaxed: and they were required to confine themselves to the point at issue, and to abstain from all attempts to excite passion or sympathy. After the first day the accused was at liberty, if he pleased, to withdraw from his country—to this rule parricide was the only exception—nor had the prosecutor any right to prevent him: but in that case he was condemned to perpetual exile, and his property was confiscated. If he abided his trial, the judges gave their votes by ballot on the third day. A majority of votes either way decided the verdict, but an equal number was an acquittal.[2] A convicted murderer was sentenced to death; and he was delivered to the Eleven for execution. The mode

ancient law. Others derive it from the active signification of the verb ἐφίημι, or ἐφίεμαι, as Müller: ὅτι ἐφιᾶσι τῷ ἀνδροφόνῳ τὸν ἀνδρηλάτην. See Whiston's article *Ephetæ* in the Archæological Dictionary: Grote's History of Greece, iii. 104, (note.)

(1) See Antiphon, De Herodis Cæde, 130, 139. Lysias, contr. Theomnestum, 117

(2) The rule supposed to have been established on the trial of Orestes. See Æschylus, Eumenides, 711, 722.

νικᾷ δ' Ὀρέστης, κἂν ἰσόψηφος κριθῇ.

* * * *

ἀνὴρ ὅδ' ἐκπέφευγεν αἵματος δίκην·
ἴσον γάρ ἐστι τἀρίθμημα τῶν πάλων

of death was commonly by drinking the juice of hemlock, which was administered in prison. The prosecutor, as we learn from Demosthenes (ante, p. 190), had a right to witness the infliction of the sentence; a provision which was rendered necessary by its secrecy. Wounding with malicious intent, not followed by death, was punished with exile and confiscation.

All minor cases of homicide were confided to the jurisdiction of the Ephetæ, who sat to try them in one or other of the four courts of Palladium, Delphinium, Prytaneum, or Phreatto, according to the nature of the case.[1] The respective duties of those courts appear from the laws quoted by Demosthenes (ante, pp. 190—193), and need not be repeated here. The sitting in the Prytaneum, to pass sentence upon inanimate things which had caused the death of a man, was an evidence of the strong belief of the ancient Athenians that homicide tainted the people among whom it was committed with a pollution which required to be expiated. This feeling was carried so far that, where there was no human being guilty, the senseless instrument of death was ordered to be cast out of the boundaries. The practice has been compared with our own custom of giving deodands in the like cases.[2] Neither this court nor that in Phreatto, which was used for cases of very rare occurrence, was at all equal in importance to the courts of Palladium and Delphinium, in the former of which cases of accidental homicide, in the latter cases of justifiable homicide were to be tried.

The circumstances which made homicide excusable or justifiable under the Athenian law by no means coincide with those which do so in the English. Any purely accidental killing, which falls under the description of homicide by misadventure, is excusable with us: as for example, if a man is working with a hatchet, and the head flies off and kills a bystander; or if a man shooting at a bird hits a person walking in the field, whom he did not observe. But if he is doing any wrongful act at the time, the killing, though undesigned, is

(1) In the Prytaneum they were assisted by the four Φυλοβασιλεῖς or Tribe-kings, an ancient aristocratical board of magistrates, who were retained by Clisthenes to perform certain religious duties, and this among others.

(2) "By this is meant whatever personal chattel is the immediate occasion of the death of any reasonable creature; which is forfeited to the king to be applied to pious purposes, and distributed in alms by his high almoner; though formerly destined to a more superstitious purpose. * * * *

"If a horse or ox or other animal of his own motion kill as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodands, which is grounded upon this additional reason, that such misfortunes are in part owing to the negligence of the owner, and therefore he is properly punished by such forfeiture. A like punishment is in like cases inflicted by the Mosaical law (Exod. xxi. 28); 'if an ox gore a man that he die, the ox shall be stoned, and his flesh shall not be eaten.' And among the Athenians, whatever was the cause of a man's death by falling upon him, was exterminated or cast out of the dominions of the republic. * * * * And therefore in all indictments for homicide the instrument of death and the value are presented and found by the grand jury, (as that the stroke was given by a certain penknife, value sixpence,) that the king or his grantee may claim the deodand: for it is no deodand, unless it be presented as such by a jury of twelve men." Blackstone's Commentaries, i. 300.

a crime in the eye of the law: and for this purpose many acts are wrongful with us, which were held perfectly innocent by the Athenians. Thus, to kill a man unintentionally in the gymnastic games was excusable by the laws of Solon, as we learn from Demosthenes; but in England one who kills another in a prize-fight is guilty of manslaughter, because prize-fights are illegal.

The reader may have noticed, that in translating the Greek φόνος I have carefully avoided using the term *manslaughter*. That word, according to its etymology, should signify nothing more than homicide; but in the language of the English law it has obtained a further meaning, and is defined to be "an unlawful killing without malice." To constitute this crime, it is not necessary that the act be voluntary. To kill a man who assaults you in the heat of passion, and to kill by throwing a stone into a crowded street, may both be manslaughter, though the character of the two acts, in regard to intention, was very different. The absence of malice in each prevents it amounting to murder.

Killing in self-defence was perfectly justifiable at Athens. In the English law it is said to be excusable rather than justifiable; while, on the other hand, it is perfectly justifiable to kill a felon who resists capture. (Blackstone's Commentaries, IV. 179, 183.) At the present day indeed there is no practical difference between the two cases; for in both the party would be acquitted and exonerated from all legal liability. In ancient times however a man guilty of excusable homicide would have incurred forfeiture of his goods, to be disposed of *in pios usus* for the benefit of the soul of the deceased. (Ibid. 188.) At Athens there was no precise distinction between what was excusable and what was justifiable. There, as with us, in considering the apology of self-defence, the main question was, whether the aggressor was slain immediately, so as to exclude the idea of malice or revenge. (Ante, p. 186.) To kill a man caught in adultery with your wife, which was justifiable at Athens, is manslaughter in England. (Blackstone, ibid. 181.) Such an excuse, like many others which among the Greeks would have constituted a good defence to the charge, is with us taken into account in mitigation of punishment only.

Where a person at Athens was convicted of accidental homicide which was not perfectly excusable, there were two things provided for by the law; first, the cleansing of the country from pollution, and secondly, the satisfaction of the deceased man's relations. Here the old Athenian sentiment was widely different from that of modern civilised people; among whom there is no idea of any national pollution arising from homicide, and all regard to the private wrong is merged in the desire for public justice. The Athenian law required the convict to quit the country by a certain appointed route, and to expiate his crime by certain religious rites: he was to stay abroad for a year, unless before the expiration of that period he could appease

or make amends to, the relations of the deceased, either by gifts or by humble submission or otherwise. If the deceased had left no relatives within a certain degree, he was to appease the members of his clan in like manner. Meanwhile the relatives and the clansmen were forbidden to prevent his departure from Athens, or in any way to molest him during his exile.

This humane law of the Athenians, which, while it prevented feud and bloodshed, provided for all due atonement and expiation, bears a resemblance to the law of Moses, by which cities of refuge were appointed for those that killed people accidentally, so that under certain conditions they might be protected from the hand of the avenger. It will be interesting to compare the Jewish with the Attic, and with the comments of Demosthenes (ante, pp. 179—181, 191, 192).

We read in Numbers, chap. xxxv. ver. 11:

"Then ye shall appoint you cities to be cities of refuge for you; that the slayer may flee thither, which killeth any person at unawares.

"And they shall be unto you cities for refuge from the avenger; that the manslayer die not, until he stand before the congregation in judgment."

Ibid. ver. 26:

"But if the slayer shall at any time come without the border of the city of his refuge, whither he was fled;

"And the revenger of blood find him without the borders of the city of his refuge, and the revenger of his blood kill the slayer, he shall not be guilty of blood:

"Because he should have remained in the city of his refuge until the death of the high-priest: but after the death of the high-priest the slayer shall return into the land of his possession."

Ibid. ver. 31:

"Moreover ye shall take no satisfaction for the life of a murderer, which is guilty of death: but he shall surely be put to death.

"And ye shall take no satisfaction for him that is fled to the city of his refuge, that he should come again to dwell in the land, until the death of the priest.

"So shall ye not pollute the land wherein ye are: for blood it defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it."

Deuteronomy, chap. xix. ver. 2:

"Thou shalt separate three cities for thee in the midst of thy land, which the Lord thy God giveth thee to possess it.

"Thou shalt prepare thee a way, and divide the coasts of thy land, which the Lord thy God giveth thee to inherit, into three parts, that every slayer may flee thither.

"And this is the case of the slayer, which shall flee thither, that he may live: Whoso killeth his neighbour ignorantly, whom he hateth not in time past;

"As when a man goeth into the wood with his neighbour to hew wood, and his hand fetcheth a stroke with the axe to cut down the tree, and the head slippeth from the helve and lighteth upon his neighbour, that he die; he shall flee unto one of those cities and live:

"Lest the avenger of the blood pursue the slayer, while his heart is hot, and overtake him, because the way is long, and slay him; whereas he was not worthy of death, inasmuch as he hated him not in time past."

Compare Joshua, chap. xx.

The custom of appeasing the kindred of the deceased may be compared to that, which prevailed among the Teutonic nations, of paying a fine or composition for homicide to the relations. Such was the *weregild* of the Saxons, the *assythment* of the ancient Scotch, and the *eriach* of the old Irish Brehon law. Such fine was payable, whether the homicide was voluntary or involuntary; for capital punishment was contrary to the spirit of the Teuton people, who thought the loss of one citizen ill repaired by the loss of another. While the Athenian law imposed only a general obligation to satisfy the relations, leaving it to them to agree as to the terms, the Teutonic code determined the rate at which the composition was to be paid, which varied according to the rank and condition of the party. In the Saxon law, the weregilds were established in progressive order, from the death of the ceorl, or peasant, to that of the king. For a ceorl it was 266 thrysmas, or shillings; for the king, 30,000. By the Salic, the composition for the murder of a bishop was 900 solidi; for that of a priest, 600. And the Franks made a marked difference between the races of the conquerors and the conquered. Thus a fine of 200 solidi was paid for a common Frank, while only 100 was paid for a Roman possessor of lands, and 45 for a tributary. (Montesquieu, Esprit des Loix, lib. xxviii. chap. 3; Hallam's Middle Ages, vol. I. p. 147; Blackstone's Commentaries, IV. 313.) Tacitus notices the custom in his treatise De Moribus Germanorum, c. 21:—"Luitur homicidium certo armentorum ac pecorum numero; recipitque satisfactionem universa domus." The last relic in our own law of the doctrine, that homicide was a private wrong, was the appeal of murder, which, after having for centuries been obsolete, was abolished by the statute 59 George III.[1]

But how was it determined, to which of the different courts any particular case of homicide appertained? Whether the act was wilful, or accidental, or justifiable, were questions to be decided by evidence, and must have been in some measure inquired into before the accused

(1) The statute was passed in consequence of the appeal of William Ashford against Abraham Thornton, for the alleged murder of his sister Mary Ashford at Sutton Coldfield in Warwickshire in the year 1817. Thornton was tried upon an indictment for the murder and acquitted. The appeal was afterwards brought, but led to nothing, Ashford declining the wager of battle. The proceedings are reported in the first volume of Barnewall and Alderson, page 405.

party could be sent to his proper tribunal. It was the business of the King-Archon to determine this point. To him belonged the *instructio litis.* The charge having been preferred to him, he summoned the parties, and heard the evidence privately. Three months were allowed for this preliminary inquiry, and at least one hearing was appointed for each month. In the fourth he brought the case before that tribunal, which from the evidence he considered the proper one to try it. The accused however, if dissatisfied with the King-Archon's decision, might still contend that his case appertained to one of the minor courts, and, in order to raise the question, might put in a plea to the jurisdiction. Thus, if he were sent to the Areopagus, he might plead that his act of homicide was justifiable, and that he ought to be tried in the court of Delphinium. If the judges took the same view, we must presume that they referred the cause to the inferior court.[1]

Whilst this previous inquiry was pending, the accused was compelled to absent himself from the market and most other public places, and especially from the temples and sacrifices. A notice to this effect was given at the funeral of the deceased by the party intending to prosecute; and the warning was repeated by the King-Archon.

The task of prosecution devolved upon the nearest relative of the deceased. To perform this task was his duty as well as his privilege; and one who neglected it, if within the degree of a first cousin's son, was held to be guilty of impiety.[2] Where the deceased had forgiven his murderer before he died, the relations might without any crime forbear to prosecute; and in cases of accidental homicide they were absolved from the necessity of so doing by the giving of legal satisfaction, unless the deceased had charged them to prosecute.[3] The

(1) On the whole of this subject, see my article *φόνος* in the Archæological Dictionary.

(2) Not only the relations who neglected to prosecute, but the judges who wrongfully acquitted, incurred the shame of crime and pollution. This is frequently insisted upon in the few orations which remain to us. Thus in Antiphon, Tetral. A. 115.

> *σαφῶς γὰρ οἴδαμεν ὅτι πάσης τῆς πόλεως μιαινομένης ὑπ' αὐτοῦ, ἕως ἂν διωχθῇ, τό τ' ἀσέβημα ἡμέτερον γίνεται, τῆς θ' ὑμετέρας ἁμαρτίας ἡ ποινὴ εἰς ἡμᾶς τοὺς μὴ δικαίως διώκοντας ἀναχωρεῖ.*

Ibid. 119.—

> *ἀδίκως δ' ἀπολυομένου τούτου ὑφ' ὑμῶν ἡμῖν μὲν προστρόπαιος ὁ ἀποθανὼν οὐκ ἔσται, ὑμῖν δὲ ἐνθύμιος γενήσεται.*

Tetral. B. 123.

> *οὔθ' οἱ θανατώσαντες ἡμᾶς μὴ εἰργόμενοι τῶν προσηκόντων εὐσεβοῖντ' ἂν ὑπὸ τῶν ἀπολυσάντων τοὺς ἀνοσίους· πάσης δ' ὑπὲρ πάντων τῆς κηλῖδος εἰς ὑμᾶς ἀναφερομένης, πολλὴ εὐλάβεια ὑμῖν τούτων ποιητέα ἐστί· καταλαβόντες μὲν γὰρ αὐτὸν καὶ εἴρξαντες ὧν ὁ νόμος εἴργει, καθαροὶ τῶν ἐγκλημάτων ἔσεσθε, ἀπολύσαντες δὲ ὑπαίτιοι καθίστασθε.*

(3) This point too is frequently urged. As in Antiphon, Accus. Venen. init. *δεινῶς δὲ καὶ ἀπόρως ἔχει μοι περὶ τοῦ πράγματος, ὦ ἄνδρες, τοῦτο μὲν εἰ ἐπισκήψαντος τοῦ πατρὸς ἐπεξελθεῖν τοῖς αὐτοῦ φονεῦσι μὴ ἐπέξειμι*, &c.

Among the Turks likewise it was the practice for the relations only to prosecute for murder. See Blackstone's Commentaries, iv. 314, (note.)

master prosecuted for the murder of his slave; the patron for his freedman.

The proceedings upon the trial of homicide in the inferior courts, so far as regards the speeches of the parties, the oaths, and other formalities, were much the same as those in the court of Areopagus. The great point of distinction was, that they were incompetent to pass a capital sentence. In later times it appears from certain passages in the orators, (see Schömann, Antiq. Jur. Publ. p. 295), that causes were tried in those courts by a jury taken from the body of the people, and not by the Ephetæ. Whether the business of those functionaries was entirely superseded or not, we cannot determine. It is probable, that for important causes the common method of trial by jury was preferred; while the Ephetæ were still employed in those rare or less important cases which were referred to the courts of Prytaneum and Phreatto. There is a particular offence mentioned in the Oration against Aristocrates, (ante, p. 178,) the cognizance of which was given by the ancient law to the Ephetæ. This was, where a man slew a murderer, who had fled from the country and kept himself aloof from the interdicted places: the person violating the protection accorded in such case to the murderer was to be tried by the Ephetæ. Another duty imposed on them, of a formal nature, is mentioned in the Oration against Macartatus (p. 1069): where a person killed accidentally had left no relations within the required degrees, the Ephetæ were to choose ten persons among his clansmen, to settle terms of reconciliation with the slayer. Duties such as these it is very likely they retained.

We have orations on the subject of homicide left us by Antiphon and Lysias. The three Tetralogics of Antiphon are rhetorical exercises, in which he gives us two imaginary speeches on both sides.

The first is a charge of murder. A man returning from a supper is found murdered together with his slave. An enemy is accused of the deed. The proofs adduced against him are all circumstantial, except the hearsay evidence of the slave, who declared in his dying moments that he recognized the defendant's person. It is objected, that no slave could give evidence except under the torture; to which the prosecutor replies that the ordinary rule was not applicable to the case of a man dying. The defendant proposes to prove an alibi, offering his slaves to be examined by torture, and suggesting that the night of the murder was a remarkable one, being on the festival of the Diipolia.

The second is a case of homicide by misadventure. Two youths were practising with javelins in the gymnastic school. One accidentally kills the other, and is prosecuted by his father. His own father defends him, and asserts that the deceased was entirely to blame for running in the way of the target.

The third is a case which in England might have been manslaughter.

An old and a young man quarrel and come to blows. The young man kills the old, and is charged with murder. His defence is that the deceased gave the first blow, that he struck him in self-defence, and with his fist only; that the death took place many days after, and was caused by unskilful medical treatment.[1]

There is a speech by Antiphon (the first in Bekker's edition), composed for a client, charging his stepmother with having poisoned his father. Very little proof is offered. The chief point of suspicion is, that she refused to give up her slaves to the question.

The defence written for the choragus, who was charged with having poisoned a chorister, must have been spoken in one of the inferior courts, probably the Palladium. For, though the chorister actually died of the poison, the charge is limited to the murderous design, of which offence the Palladium had cognizance equally with the Areopagus.[2]

The Oration *De Cæde Herodis* is the defence of a man charged with murder, but this charge seems to have been combined with others of conspiracy and robbery, so that the defendant was not proceeded against in the ordinary way, but had an information laid against him as a malefactor, and was tried by a popular jury. The facts were these. He had sailed in the same vessel with Herodes, bound for Ænus.

(1) Questions of this sort frequently arise in our courts, how far the death of a deceased party was caused by the wound which he had received; and the skill of the surgeon often forms the disputed point. Beck in his Medical Jurisprudence, chapter 15, affords much useful information upon the subject.

"It may happen," says he, "that while the patient is suffering under a wound, he is attacked with disease and dies: and the question then arises, whether the fatality is owing to the wound or the disease. In some instances the solution is easy; in others it is attended with considerable difficulty. Thus, for example, a fever attended with comatose symptoms may supervene on a wound of the head, and pleurisy may follow on a wound in the thorax. The probability in such instances is, that the injury has produced the disease; but there is, notwithstanding, sufficient latitude left for doubt, and circumstances may arise which will prevent us from assigning the wound as the cause of death. On the other hand, should gangrene, buboes, petechiæ, or the other symptoms of malignant fevers appear on a wounded person in a hospital, or during the warm season of the year, or during the prevalence of such an epidemic, it would certainly seem the cause of death is distinct from the danger of the wound. A similar observation will apply, when an inflammatory or typhus fever supervenes on slight wounds, and renders them fatal. * * * *

"In cases brought before courts of justice, however, it is to be recollected, that they are far from being as easy of solution as those just quoted. They are generally of intemperate persons who have engaged in brawls, receive injuries, and after an uncertain period die; and the question arises, whether the habits of drunkenness or the blow has caused the loss of life. As a general rule, I would always lean towards the accused, unless the proof of malice is conclusive. The habitual use of spirituous liquors is so apt to produce a diseased state of the system, that, with the above exception, we shall best promote the ends of justice by considering the offence as a secondary one."

All this he illustrates by numerous examples.

(2) Βουλεύσεως. Perhaps the prosecutor might waive the more serious charge, and proceed for the attempt to kill only: or the King-Archon, when there was a grave doubt whether the case amounted to murder, gave the accused the benefit of it, and sent him to the Palladium rather than the Areopagus. See the Oration De Choreutâ, 141, 143. Schömann, Art. Jur. Publ. p. 294, (note 19.) Meier, Att. Proc. 312, who suggests that the charge of murderous design could only be brought against a person who was the mediate cause of death—who effected it without any actual violence on his own part.

They put into a port of Lesbos, and there changed ships. Herodes went on shore, and was not seen again. The defendant, on his return to Athens, was accused by the relations of Herodes of having made away with him. The only direct evidence against him is that of a slave, who had been put to the torture. The prisoner declares that what the slave said upon the rack he denied both before and after. He pleads also, that the proceedings taken against him were illegal. Being charged with murder, he ought to have been tried according to the laws of homicide—the prosecutors would have an unfair advantage, by escaping from the solemn oath and other formalities prescribed by the laws of the Areopagus—the jury therefore were bound to acquit him on the present arraignment, and that would not prevent his being afterwards tried for murder.

The speech of Lysias against Agoratus was written in support of a prosecution similar in point of form to that last mentioned. Agoratus had caused the death of many innocent citizens, by acting as an informer and agent for the Thirty Tyrants. He was proceeded against by information, and tried before a popular jury.

The defence of the party charged with killing Eratosthenes is instructive as to the domestic habits of the Athenians. The ground of justification is, that he caught the deceased in adultery with his wife. On the other side it appears to have been alleged, that Eratosthenes was entrapped into the defendant's house, and therefore he was not entitled to an acquittal. The case was perhaps tried in the court of Delphinium.

There are two defences of Lysias to charges of malicious wounding, tried before the Areopagus. One is the speech against Simon; in which the defendant asserts, that the wound was inflicted without any malicious intent in a brawl caused by the prosecutor himself. The other speech is anonymous.

We must now proceed to offences of a different description, and first to those which are committed directly against the executive government, such as

TREASON AND HIGH STATE CRIMES.

Treason, the *crimen læsæ majestatis* of the Romans, has in all countries been regarded as the gravest offence which any man, as member of the political community, can be guilty of. We may define it to be a betrayal of that allegiance which a man owes to the state. One of its most mischievous forms is, an attempting to subvert the government, in whatever way that attempt is made; as for example, in monarchies, by killing or endeavouring to kill the sovereign, or to usurp his power; in republics, by taking measures to establish a monarchy; and under any government, by using forcible means to change the laws or constitution. It is treasonable to coerce the ruling power by violence; or to conspire with the enemies of the country, or assist them against her. Such is the general notion of

treason, which is applicable to almost all countries, independently of any particular statute law. The most important question however has been, to determine what amount of evidence should be sufficient to convict men of this crime. People can rarely be tried for high treason, except in cases where their attempt has failed, according to the well-known maxim,

> Treason never prospers: what's the reason?
> Why, when it prospers, no man calls it treason:

and therefore the proof of it must often depend upon acts which were incomplete and dubious in their character. In judging of such acts despots have always found it convenient to allow a vague and arbitrary construction; while, on the other hand, the friends of constitutional liberty have struggled to limit the discretion of the judges appointed to try questions of high treason, and bind them by strict definitions of the offence.

Montesquieu (Esprit des Loix, Lib. XII. c. 8) says, it is enough that the crime of treason should be vague, to make the government degenerate into despotism; and he cites many examples from history to illustrate this. Blackstone expresses himself to the same effect. By the common law of England the crime of high treason was in no way defined, so that, a large latitude of construction being left to the judges, many offences of a trivial nature were adjudged to be treasonable. Thus in the reign of Edward I. appealing to the French courts in opposition to the king's was declared in Parliament to be high treason. To prevent such loose constructions, the statute of Edward III. was passed, which declares for the future what should be considered treason; and nothing can be construed to be treason under this statute which is not literally mentioned therein. Eight different offences are specified, of which the principal are, compassing or imagining the death of the king or queen or heir apparent, levying war against the king in his realm, and adhering or giving aid to the king's enemies. This statute, with some modifications, is law at the present day, many tyrannical acts passed in evil times and introducing new treasons having been repealed. It might seem, that the first of the above-mentioned kinds of treason, viz. the compassing or imagining the death of the king, consisting, as it does, in a mere intention or act of the mind, had too much of vagueness about it for the security of the subject. In the proper construction of the statute however, this treason was held not to fall under judicial cognizance, unless it was evidenced by some overt act on the part of the culprit. The taking of any measures to render the treasonable purpose effectual was always considered a sufficient overt act of treason; for example, the collecting of arms, the assembling of forces, the holding consultations or carrying on correspondence in furtherance of the design. Some of these overt acts, which used to be regarded as evidences of treason, were made substantive treasons in the reign of George III., and the law has been much simplified and improved. Divers secu-

rities, rendered necessary by the violence of unconstitutional kings and the servility of ministers and judges, have been provided by the wisdom of the English legislature; which there is not room to refer to here. (See Coke's Institute, III. 7; Hawkins' Pleas of the Crown, I. 34; Blackstone's Commentaries, IV. chap. 6; Hallam's Constitutional History, III. p. 204, &c.)

No such safeguards were provided by the Athenian lawgiver for the members of his commonwealth. The circumstances indeed were very different. The people were the rulers. They themselves—or a large body taken from among them, which was the same thing—were the judges who tried persons charged with violating the majesty of their power. Every man who tried such a charge was interested that the law should not be strained too far against the accused: for it might in like manner be strained against himself at some future time. Looking at the matter in this point of view, there would seem to have been less necessity for providing checks to a judicial power, which was exercised by and for the benefit of the people. We may go further, and say—it was impossible to provide any such check after the democracy had been fully established. But was there no danger to be apprehended from the violence of a popular tribunal, attached to their own free constitution, and alarmed at any appearance of a revolutionary design? As a despot fears any tumultuous rising of the people, lest it should terminate in rebellion, so must a democracy, until it has been tranquillized by the long and undisturbed continuance of power, dread the ambitious projects of men who are distinguished by superior birth, wealth, and talents. That the Athenians were not exempt from fears of this sort, is proved by the histories of Themistocles, Cimon, Alcibiades, and other eminent citizens. Perhaps at no time during the existence of the democracy can they have regarded it as wholly safe and secure. The remembrance of Cylon's conspiracy, of the Pisistratids, of Isagoras, of Pisander and Phrynichus, and of the tyranny of the Thirty—not to mention the revolutions which were continually occurring in other states of Greece—must have kept alive in them a sense of political danger. And yet with all this it does not appear that the Athenian juries, as a general rule, dealt harshly or unjustly with men tried for political offences. The humanity and love of justice which belonged to the Athenian character prevented any such consequence: though the laws themselves against treasonable conspiracy were decidedly severe, and in construing the offence a most ample discretion was left to the judicial body.

The hatred of the Athenians against tyrants and tyranny abundantly appears by the honours which they paid to tyrannicides, those of other countries as well as their own. (See ante, pp. 204, 212.) They went indeed beyond this: they not only honoured the tyrannicide after the event, but encouraged and stimulated him to the enterprise beforehand. A special decree was passed after the deposition of the

oligarchy of Four Hundred, making it lawful to kill any man who attempted to establish a despotism or subvert the democracy, or those who aided and abetted him; and prescribing an oath to be taken by every Athenian, that he would kill with his own hand any person who made the attempt. This was the decree of Demophantus, referred to in the Oration against Leptines. (Ante, p. 54.) Among the aiders and abettors, whom it was lawful to kill, were included those who should dare to hold office under the usurping government. We may regard this decree as a solemn declaration by the whole people, that they would uphold their constitution as by law established. To kill a man, if it was necessary to prevent the accomplishment of treason, would be lawful and justifiable in any country: the danger of encouraging such a thing by express statute would be, that the privilege might be abused. We have seen that in cases where the public safety required it the Council of Areopagus were authorised to deal summarily with offenders; and that they exercised this power with great severity on some occasions. (See Vol. II. Appendix III.)

The ordinary law however was not deficient in providing for the punishment of these offences at Athens. There were indictments and impeachments for treason, and specially for the attempt to establish a tyranny, or to put down the democracy.[1] We have two speeches of Lysias, and a fragment of a third, upon charges of the last description. The first is a defence of one Polystratus, who had acted as a member of the Council during the oligarchy of the Four Hundred; the second, an anonymous defence of a man, accused of having been a partisan of the Thirty Tyrants. Under the general title of *προδοσία*, or treason, were included not only such offences as we should designate by that name, but many that we should term high misprisions or misdemeanors. The orators indeed frequently use the term loosely, and not according to its strict legal acceptation. In a large sense, every man may be said to be a traitor, or guilty of treason against his country, who corruptly sacrifices her interests, or neglects the duty which he owes to her; and we find offences branded with this name by the orators, to which the laws gave other and more appropriate titles.[2] The Athenian juries however had full power of interpretation upon an actual trial for treason. This is strongly exemplified by the case of Leocrates, who was tried for having deserted his country after the battle of Chæronea. (See Vol. II. p. 393.) Conviction for treason was usually followed by capital sentence. The body of the condemned was cast out of the country without burial, his house was razed to the ground, and the infamy descended to his children. After the death of Themistocles, who was banished for treason, his relations (according to their own

(1) Τυραννίδος and καταλύσεως τοῦ δήμου. See Meier and Schömann, Att. Proc p. 341.
(2) See my article Προδοσια in the Archæological Dictionary.

account) brought his bones to Athens, and buried them secretly; but this was contrary to law, as Thucydides tells us. (I. 138.) It is noticed by Meier as a peculiarity in the Athenian law, that traitors might be proceeded against after their death. This was done at least in the case of Phrynichus, one of the chiefs in the oligarchy of Four Hundred; who having been assassinated in the year B.C. 411, shortly before the deposition of the Four Hundred, the people afterwards went through the ceremony of trying him for the part which he had taken in the revolution against the democracy, and for treasonable correspondence with the Lacedæmonians. Condemnation was formally passed upon him; his bones were dug up, and cast out of Attica; and the Athenian franchise was conferred as a reward upon the persons who claimed to have been his murderers.[1] About the same time his colleagues Antiphon and Archeptolemus, having been tried and condemned for the same acts of treason, suffered the extreme penalties of the law.

Indictments were allowed at Athens upon a general charge of wronging the State, or deceiving either the people or the council or the courts of justice.[2] (See ante, p. 46. Vol. II. pp. 102, 204.) Thus, Miltiades appears to have been convicted upon a charge of deceiving the people. (Herodotus, VI. 136.) Ambassadors were liable to a charge of *misconduct in the embassy;* which charge, as we have seen clearly enough from the speech of Demosthenes against Æschines, might include the crime of high treason as well as lesser misdemeanors, and in short, every kind of culpable negligence in the performance of their duty. Indictments for *illegality*, *παρανόμων*, the subject of which has been discussed in the Second Volume, were preferable against the authors of statutes or decrees, which were either unconstitutional or of mischievous tendency; and such was considered the proper method, not only of punishing the offender, but also of repealing the objectionable enactment. (Ante, p. 34, note 3, and Vol. II. Appendix VII.) The punishment in all these cases was discretionary with the jury.

OFFENCES AGAINST THE REVENUE.

Embezzlement of the public money was triable under a special indictment.[3] All magistrates and officers, through whose hands any of the public monies passed, were bound to render an account to the Logistæ, or Auditors, within thirty days after the expiration of their official term, or they were liable to be indicted for the default. Strict laws were made to ensure the responsibility of such persons They were not allowed to travel abroad, or to dedicate their property

(1) These were Thrasybulus of Calydon and Apollodorus of Megara. The honour was claimed by Agoratus, against whom the Oration of Lysias was composed See Lysias cont. Agoratum, 136. Lycurgus cont. Leocratem, 164. Thucydides, viii. 92. Thirlwall's History of Greece, iv. 74, 75.

(2) 'Αδικίου, ἀπατήσεως τοῦ δήμου, &c. See Meier and Schömann, Att. Proc. 344.

(3) Κλοπῆς δημοσίων χρημάτων. Meier and Schömann, Att. Proc. 359.

(4) 'Αλογίου. Meier and Schömann, ibid 363

or any part of it to the Gods, or to be adopted into other families, or to make their wills; in short, to use the language of Æschines,[1] the law held their property in pledge until they had passed their accounts. At the time of the audit any citizen might appear to accuse them: and, as the responsibility of the higher functionaries was not confined to financial and pecuniary questions, charges of embezzlement and pecuniary deficit might be combined with other official malversations. (See Vol. II. p. 27, note 1.)

The severe measures adopted to enforce the payment of debts to the State have been partly noticed already. (Ante, p. 52, note 3.) An information lay against any one whose name was not duly entered as a debtor in the public register, or who presumed to exercise civic privileges before he had discharged the debt.[2] If his name were improperly erased from the register, an indictment lay against him, and doubtless against all who were parties to the erasure, and against the officers by whose neglect it was caused;[3] while, on the other hand, those who made wrongful entries of debts in the register were liable to be prosecuted by the parties aggrieved.[4] The trial of such prosecutions took place before the Thesmothetæ

As a better means of recovering the public debts and preventing frauds upon the treasury, any citizen was at liberty to give information of goods or effects which either belonged to the state, or had been confiscated, or were liable to be seized in execution. It was the ordinary business of the Demarchi to inquire after such property; and sometimes extraordinary officers called *Zetetæ* were appointed to make the necessary search. It might happen that public property had got into the hands of a private individual; or that a state-debtor had concealed his effects, or procured a friend to conceal them for him; or that his goods were taken and held by some one under a wrongful claim. The party discovering this handed in a written statement to the magistrate, containing a description or schedule of the property in question, and showing where and in whose possession it was to be found. If the holder of the property allowed the claim of the state, the public officers took possession, and there was an end of the matter. If he disputed it, whether wholly or in part, which might be either on the ground that the property was his own, or that he had a mortgage or lien upon it, recourse was had to a trial by jury; in which, if the property had not been seized on behalf of the state, the informer appeared as prosecutor, but, if it had been seized, he appeared as defendant, and

(1) Cont. Ctesiph. 56. *ἐνεχυράζει τὰς οὐσίας ὁ νομοθέτης τὰς τῶν ὑπευθύνων, ἑῶς ἂν λόγον ἀποδῶσι τῇ πόλει.*

(2) This was called *ἀπογράφειν* or *ἀπογράφεσθαι*. The statement or schedule was called *ἀπογραφή*, and the same title was given to the legal process by which it was contested.

(3) This was called *ἀγραφίου γραφή*. Meier and Schömann, Att. Proc. 353.

(4) By a *ψευδεγγραφῆς γραφή*. And if the name of a debtor, who had paid all that was due, were not erased by the Practores, they were liable to a *βουλεύσεως γραφή*. See my article *Pseudengraphes graphe* in the Archæological Dictionary.

the private claimant in that case deposited a fifth part of the value, which was forfeited if he lost the verdict. If the informer failed to obtain a fifth part of the votes, he was liable to the penalty of a thousand drachms for having preferred a false charge.[1]

We have three speeches of Lysias and one of Demosthenes upon trials of this kind. The speech of Lysias against Philocrates was written in support of an information, which charged him with having in his possession the confiscated property of Ergocles, a condemned criminal. The speech entitled *On the property of Aristophanes* is a defence composed for the father-in-law of Aristophanes upon the like charge. In each of these cases the question is the same; namely, whether certain property in the possession of the accused really formed a part of that which was confiscated to the state. The speech of Demosthenes against Nicostratus was written in defence of his client Apollodorus, who is charged with having wrongfully scheduled three slaves of the prosecutor as the property of one Arethusius. Here the question is simply, whether those three slaves belonged to Nicostratus, or whether they belonged to Arethusius, and thus were liable to be seized by the State under a judgment against him.

In some cases, as it appears, the defendant brought up on one of these revenue processes was permitted to impugn the original judgment, by which his property became liable to seizure. We have an example in the speech of Lysias *for the Soldier.* One Polyænus was fined by the Generals for speaking abusive language of them. The fine not having been paid, his property is scheduled, and he is called upon to show cause why it should not be taken to satisfy the fine. He alleges in answer, that the fine was unlawfully imposed, and that such was the opinion even of the treasurers, to whom it was returned, and who had declined to enforce it. In effect, his defence is an appeal to a jury from the sentence of the Generals. Whether, when a penalty had been inflicted by a jury, the legality or justice of it could strictly be contested upon a proceeding of this kind, may reasonably be doubted.[2]

OFFENCES RELATING TO THE COIN.

Debasing of the coin,[3] either by lessening its weight or by alloying it with inferior metal, was an offence punishable with death at Athens. We do not learn that the simple act of coining by an individual was a violation of the Athenian law. In England, where the forging of money was always a branch of the regal prerogative, any invasion of

(1) The cognisance of these causes belonged ordinarily to the Eleven; but was at times assigned to extraordinary magistrates called Syndici. See Meier and Schömann, Att. Proc. 253, &c.; and also my articles *Practores, Syndici, Zetetæ.* &c. in the Archæological Dictionary.

(2) Notwithstanding the statement in the speech of Lysias against Philocrates: προσήκει γὰρ αὐτῷ ἀποδεῖξαι ἢ ἑτέρους ἔχοντας τὰ Ἐργοκλέους χρήματα, ἢ ἀδίκως ἀπολωλότα ἐκεῖνον καὶ οὐδὲν ὑφῃρημένον τῶν ὑμετέρων οὐδὲ δεδωροδοκηκότα.

(3) Νομίσματος διαφθορά. See ante, p. 58. Meier and Schömann, Att. Proc. 346

such right by the subject was deemed criminal, whether he deteriorated the coin or not. By the statute of Edward I. it was declared to be high treason to counterfeit the king's money, or to import any such counterfeit money for purposes of merchandise. And now by various statutes it is felony and highly penal, to counterfeit any coin of the realm, or to make or procure tools or stamps for the purpose, or to alter, lighten, or impair any of the current coin, or to counterfeit any of the gold or silver coin of foreign states, or knowingly to utter any base or counterfeit money, whether to pass it as foreign or English. It does not appear that the Athenian government, though it possessed its own mint (*argyrocopeum*), reserved to itself the exclusive right to coin money. On the contrary, it appears from inscriptions on some ancient coins which are extant, that they were struck by the townships of Attica; and we know that the money of other countries, as the stater of Cyzicus and the daric, passed commonly at Athens. The Athenians however were most anxious to maintain the purity of their gold and silver coinage, and therefore made the debasing of it a capital offence. In one instance only during the period of the democracy were they known to use base metal in the coinage, and that was at a time of great distress, just before the close of the Peloponnesian war. (See Böckh's Public Economy of Athens, Transl. II. 382, &c. Demosthenes, cont. Timocratem, 765, 766. Aristophanes, Ranæ, 178.)[1]

BRIBERY AND CORRUPTION.

To give or offer a bribe for a corrupt purpose to any magistrate or councillor or public advocate or juryman or member of the popular assembly, or for any such person to accept a bribe for the like purpose, was an offence triable before the Thesmothetæ, and punishable either with death, or a fine of ten times the value of the bribe, or a further penalty at the discretion of the jury.[2] It is said that the bribing of juries, first contrived by Anytus, was afterwards, in spite of the law, reduced to a system.[3] The reader of the

(1) Πολλάκις γ' ἡμῖν ἔδοξεν ἡ πόλις πεπονθέναι
ταὐτὸν ἔς τε τῶν πολιτῶν τοὺς καλούς τε κἀγαθοὺς
ἔς τε τἀρχαῖον νόμισμα καὶ τὸ καινὸν χρυσίον.
οὔτε γὰρ τούτοισιν οὖσιν οὐ κεκιβδηλευμένοις,
ἀλλὰ καλλίστοις ἁπάντων ὡς δοκεῖ νομισμάτων,
καὶ μόνοις ὀρθῶς κοπεῖσι καὶ κεκωδωνισμένοις
ἔν τε τοῖς Ἕλλησι καὶ τοῖς βαρβάροισι πανταχοῦ,
χρώμεθ' οὐδὲν, ἀλλὰ τούτοις τοῖς πονηροῖς χαλκέοις,
χθές τε καὶ πρώην κοπεῖσι, τῷ κακίστῳ κόμματι, &c. &c.

Compare Ecclesiazusæ, 815.

(2) The indictment for receiving a bribe was called *δώρων* or *δωροδοκίας γραφή* that for giving or offering, *δεκασμοῦ*. The law as quoted by Demosthenes, and his remarks upon it (De Fals. Leg. 343), remind one of the simple but emphatic language of the Jewish lawgiver, Exodus, ch. xxiii. ver. 8.

"And thou shalt take no gift: for the gift blindeth the wise, and perverteth the words of the righteous."

Compare Deuteronomy, ch. xvi. ver. 19.

(3) Thirlwall's History of Greece, ii. 49 Plutarch, Vit. Coriol. 14.

Attic orators knows how lightly they made charges of this kind against their opponents, how Demosthenes denounces the corruption of the philippising party, and how Æschines returns the compliment. Four orations are extant upon direct prosecutions for bribery: one by Lysias; which, being a second speech, gives us very little information upon the subject;[1] and the three of Dinarchus, against Demosthenes, Aristogiton, and Philocles, written in support of the prosecution for taking bribes of Harpalus. Demosthenes, having first been pronounced guilty upon this charge by a report of the Areopagus, was brought to trial before a jury, who convicted, and sentenced him to pay a fine of fifty talents. Being unable to pay the fine, he was thrown into prison, but soon afterwards escaped and went into exile. The justice of the verdict is exceedingly doubtful. (See Thirlwall's History of Greece, VII. 156, &c.)

In our own country it has always been a misdemeanor by the common law, for any of the judges or officers of the king's courts to take a bribe; and a statute passed in the reign of Henry IV. ordered persons so offending to forfeit treble the value of what they had received. Notwithstanding the law, we know that the practice of receiving presents continued (even after the impeachment of Bacon) until the sentence upon Lord Macclesfield in 1724. The number of statutes passed to prevent bribery at elections, and the ill success which has attended them—the notorious corruption of public men in many periods of our history—the infamous mode in which public patronage has been dispensed—all this may convince us, that Xenophon's assertion, "that anything could be done at Athens for a bribe," was not more applicable to Athenians than to Englishmen.

PERJURY AND PETTIFOGGERY.

Perjury, or at least false testimony, was by the Athenian law deemed a civil offence, and subjected the false witness to an action at the suit of the party injured. The jury however, besides giving damages to the plaintiff in the action, might inflict on the defendant, if they pleased, the penalty of disfranchisement; and upon a third conviction a man was *ipso jure* disfranchised. Subornation of perjury drew with it similar consequences.[2] On the other hand, a witness who falsely swore to the service of a summons was liable to a criminal prosecution, and might in a gross case be punished even with death.[3]

By the name of *pettifoggery* I designate that class of offences

(1) Meier (Att. Proc. 351) suggests that the speech, which has been entitled Ἀπολογία δωροδοκίας, was rather a defence to an ἀπογραφή. One passage in the speech certainly favours this view: ἡγοῦμαι δ' ὦ ἄνδρες δικασταί, (καὶ μηδεὶς ὑμῶν ἀχθεσθῇ,) πολὺ ἂν δικαιότερον ὑμᾶς ὑπὸ τῶν ζητητῶν ἀπογραφῆναι τὰ ἐμὰ ἔχειν, ἢ ἐμὲ νυνὶ κινδυνεύειν ὡς τοῦ δημοσίου χρήματα ἔχοντα.

(2) See my article Μαρτυρία in the Archæological Dictionary. The Jewish law adopted the principle of retaliation in perjury: see Deuteronomy, ch. xix. ver. 16.

(3) As to the probable reason of this distinction, see my article [illegible]νδοκλητεία in the Archæological Dictionary.

which the Athenian law entitled *Sycophantia;* which included calumny and conspiracy, false accusation, malicious prosecution, threats of legal proceedings to extort money, and generally, all abuse of legal process for mischievous or fraudulent purposes. Such practices, owing to the policy of the law which encouraged private individuals to come forward as informers and prosecutors, became very common at Athens. The offenders might be proceeded against by indictment, or information, or even impeachment in very serious cases. The punishment was discretionary with the jury.[1]

USURPATION OF CIVIC PRIVILEGES.

Any one who, not being a citizen, exercised the rights of citizenship at Athens, was amenable to an indictment,[2] which any Athenian might prefer against him. If convicted, his person and property were forfeited to the state, and he was sold forthwith for a slave. If he procured his acquittal by collusion or bribery, he was liable to another prosecution,[3] which was attended with the same results. The cognizance of this offence belonged anciently to the Nautodicæ, but in the time of Demosthenes to the Thesmothetæ.[4]

In order to preserve the purity of Attic descent, a law was passed by Pericles, making it necessary to citizenship that both the father and the mother should be Athenians; which law was re-enacted by Aristophon B.C. 403. An indictment lay against any Athenian of either sex, who married a foreigner; and against any foreigner of either sex, who married an Athenian; and against any citizen, who gave a foreign woman in marriage to another citizen, pretending that she was his relation, or who gave a woman, whose guardian he was, in marriage to a foreigner abroad.[5] The Oration against Neæra furnishes us with a good deal of information upon these points. It seems also, that supposititious children might be prosecuted, and sold for slaves upon conviction.[6]

As a further precaution against the intrusion of foreigners into the state, each Attic township used from time to time to revise the register of its members, and to expunge the names of those who had been fraudulently or improperly enrolled. The ejected member had the right of appealing to a jury, who restored him on proof of his title; but, if he failed to prove it, the like sentence was pronounced against him as upon an indictment for the usurpation of civic rights. The Oration of Demosthenes against Eubulides was spoken upon an occasion of this kind.

As to the proceedings against a resident alien for neglecting to appoint his Patron, see ante, p. 251.

(1) See my article Συκοφάντης in the Archæological Dictionary.
(2) Called ξενίας γραφή. (3) Δωροξενίας γραφή.
(4) Meier and Schömann, Att. Proc. 84, 347.
(5) Such a prosecution was called ἐξαγωγῆς γραφή.
(6) By a γραφὴ ὑποβολῆς. See Meier and Schömann, ibid. 340

BREACHES OF MILITARY LAW.

One who absented himself from the army, after being enlisted by the Generals; or who declined to perform his duty, or deserted the post assigned to him; or who misbehaved himself in action, either by throwing away his shield or by any other act of cowardice or breach of discipline; or one who committed any of the like offences in the naval service; was liable to be prosecuted as a criminal,[1] and, if convicted, suffered the penalty of disfranchisement. A sort of court martial was held for the trial of such offences, composed of the Generals, (assisted perhaps by the inferior Officers,) as presidents, and a jury of the soldiers or sailors who were comrades of the accused.[2] The great importance of the naval service made it necessary to enact severe laws against the trierarchs who failed to keep their ships in repair, to provide proper equipments, &c. The appointment of a deputy captain was in strictness considered to be a desertion of duty, though the practice was permitted in later times. There are two speeches of Lysias against Alcibiades upon a prosecution for breach of military duty. The defendant, a son of the famous Alcibiades, had joined the ranks of the horsemen, instead of serving, as he should have done, among the heavy-armed infantry: this was by law a desertion of his post. The act of Midias in taking the command of his ship, in order to escape from service in the cavalry, is characterised by Demosthenes as an offence of the like nature. (See ante, pp. 119—121.) Demosthenes himself had an indictment preferred against him for desertion of post, as we have seen, (ante, p. 99.)

OFFENCES AGAINST RELIGION AND MORALS.

The most important under this head is Impiety; a term of very extended signification; embracing not only charges of a specific nature, such as desecration of temples, images, altars, or graves; violation of the right of asylum; profanation or disclosure of the mysteries; entering sacred places, while under a prohibition so to do;[3] digging up of the sacred olives; breaches of the ceremonial law in the performance of sacrifice and acts of devotion, &c.; but charges also of a more general character, such as contempt of the

(1) By γραφαὶ ἀστρατείας, ἀναυμαχίου, λειποστρατίου, λειποναυτίου, λειποταξίου, δειλίας. The reproachful title of ῥίψασπις is familiar to the readers of Aristophanes. Compare Horace's *relictâ non bene parmulâ.*

(2) See Meier and Schömann, Att. Proc. 108, 363. The tribunal of the Generals, to which a civil as well as criminal jurisdiction was annexed, reminds one in some measure of the Court of Chivalry, formerly held by the Lord High Constable and Earl Marshal of England. This court fell altogether into disuse after the execution of the Duke of Buckingham (who was the last High Constable) in the reign of Henry VIII., its authority having long before been encroached upon by the arbitrary commissions of the crown; but all the military jurisdiction of the common law has been superseded by the courts martial established after the Revolution. See Hallam's Constitutional History, i. 326. Blackstone's Commentaries, i. 416.

(3) This was one of the charges against Andocides. See the Oration on the Mysteries, 71. Ed. Bekker. Lysias cont. Andocidem, 107.

established religion, blasphemy against the Gods, neglect of public worship, teaching of mischievous doctrines or false philosophy, and the like. Of the last description one of the most remarkable instances is that of Anaxagoras, who was thrown into prison on account of his theories respecting the Sun. It required all the influence of Pericles to obtain his release. Protagoras was banished from Athens for having expressed himself doubtfully about the existence of the Gods. Diagoras of Melos got the name of an atheist seemingly, because he held less gross opinions as to the nature of the Deity than his contemporaries. After the punishment of his countrymen by the Athenians in the Peloponnesian war, a religious cry was raised against him at Athens; he was obliged to fly, and a reward of a talent was offered to any person who should kill him. (See Diodorus, XIII. 6. Cicero, De Naturâ Deorum, I. 23. Plutarch, Vit. Pericl. 32. Vit. Nic. 23.) Socrates is invidiously called *the Melian* by Aristophanes, meaning that he was an atheist like Diagoras. (Nubes, 830.) The prosecution of Socrates, his condemnation and death, are familiar to all. (See ante, p. 258.) Such charges might be preferred by any Athenian citizen; and they afforded a wide scope for persecution by political enemies or informers.[1] But what is the religious persecution of ancient times compared with that of modern? Let us only look back to the records of our own history, and to those laws by which apostacy, heresy, popery, non-conformity, sorcery, witchcraft, &c., were reckoned among the most heinous crimes; all of which now (and we ought indeed to be thankful for it) are either expunged from the statute book, or left solely to ecclesiastical cognizance; simony and blasphemous libel being almost the only pure offences against religion, which are punishable by our criminal law.

We have four extant speeches upon trials for impiety. The most interesting of these is the *Apologia Socratis* of Plato, an imaginary oration, supposed to have been spoken by Socrates in his own defence. There is also the speech written by Lysias for the prosecution against Andocides; that of Andocides in his own defence, an able composition, which throws much light upon the history of the day; and that of Lysias upon the Sacred Olive, in which he defends a man charged with having dug up one of those trees which Athenian piety held to be sacred.[2]

(1) A charge of atheism is thus made against Andocides in the Oration of Lysias, 105. Ἐπεδείξατο δὲ καὶ τοῖς Ἕλλησιν ὅτι θεοὺς οὐ νομίζει, οὐ γὰρ ὡς δεδιὼς τὰ πεποιημένα, ἀλλ᾽ ὡς θαῤῥῶν, ναυκληρίᾳ ἐπιθέμενος τὴν θάλατταν ἔπλει.

(2) These were believed to have been propagated from the original olive planted on the Acropolis by Minerva, and were called *μορίαι ἐλαίαι* or *σηκοί*. (See Lysias, *περὶ τοῦ σηκοῦ*, 109. Sophocles, Œdipus Coloneus, 693, &c.) The penalty for cutting down any of these was death. There was also a law (cited by Demosthenes cont. Macartatum, 1074) for the protection of common olive-trees, the culture of which was deemed important. It prohibited the owner from cutting down any, except for a public festival, or two a year for his own private use, or for a funeral; and for every one that should be destroyed unlawfully gave a penalty of a hundred drachms to the state, and as much to the prosecutor. (See Böckh's Public Economy of Athens, Transl. i. 59; ii. 72. Meier and Schömann, Att. Proc. 304.)

The last-mentioned oration is addressed to the court of Areopagus; from which, as well as from some other examples mentioned by ancient writers, we collect that the Areopagus took occasional cognizance of the crime of impiety. The King-Archon doubtless had the right to bring such offences before a popular jury, as was done in the instances of Socrates and Andocides: but the Areopagites, having a censorial power as guardians of the public morals, might assume to themselves in a certain class of cases a concurrent jurisdiction; while others might be specially referred to them by the magistrate or by popular decree. The jurisdiction of the Eumolpids, to which Demosthenes refers in the Oration against Androtion, (ante, p. 148,) in whatever way it was exercised, (which is unknown to us,) was doubtless of very limited application, and probably confined to ceremonial questions of no great importance.

The proceedings against the accused might be either by indictment, or information, or impeachment, or arraignment before the popular assembly, according to the nature of the case. The penalty was (generally speaking) discretionary with the jury. It might be death, fine, or banishment. Of the sentence passed upon Socrates I shall speak by and by.

Adultery, which by the common law of England is only a civil offence,[1] though amenable to censure under the ecclesiastical law, was at Athens considered as highly criminal. We have seen, by the statute cited in the Oration against Aristocrates, (ante, p. 184,) that it was lawful for a man to kill on the spot one whom he caught in adultery with his wife, daughter, sister, or even concubine with whom he lived on certain terms. He was at liberty however to forego his lawful revenge, and to accept money in satisfaction; in which case he might detain the person of the adulterer, until he found sureties for payment. In all cases, whether the adulterer were caught in the act or not, the husband or aggrieved party might indict him. What punishment he was liable to upon conviction, is not known to us: probably it was at least disfranchisement. The husband of an adulteress was obliged to dismiss her, under pain of being himself disfranchised. She was forbidden afterwards to enter the temples, or even to go into public with any of the ornaments which free women were accustomed to wear. If she did so, any one who met her might tear them off, and treat her with every kind of indignity, short of maiming and wounding. This, as Æschines tells us, was by an ancient law of Solon. (Orat. Cont. Timarchum, 26. Compare Demosthenes cont. Neæram, 1374.)

From the Oration against Neæra, as well as from that of Lysias against Eratosthenes and other sources, we may collect, that the right of the husband or guardian to inflict summary punishment on

(1) A statute was passed under the Commonwealth, in 1650, which made adultery a capital crime; but this was repealed in the reign of Charles II. By the law of Moses it was capital. See Leviticus, ch. xx. ver. 10. Deuteronomy, ch. xxii. ver. 22.

the adulterer was liable to abuse. There were laws however to prevent money being extorted under pretence of such a charge. It was necessary for the party so avenging himself, to give proof that the adulteress was his wife, daughter, sister, &c. The paramour, whose person he had detained, might indict him for false imprisonment, if the detention were contrary to law; and, if he succeeded, he and his sureties were released from their liability; otherwise, he was given up to his adversary, who might inflict upon him a limited amount of corporal chastisement. Such cases were triable before the Thesmothetæ.[1]

It was certainly not the fault of the laws at Athens, if the purity of public morals was not preserved. There were severe statutes against procurers and procuresses, who seduced free-born youths and maidens from the path of virtue; and also against parents and guardians, who permitted them to lead vicious lives. In the Oration of Dinarchus against Demosthenes (24, Ed. Bekker), mention is made of one Euthymachus, who was put to death for having placed an Olynthian girl in a brothel. Aspasia was indicted by Hermippus the comedian, for bringing the wives and daughters of citizens into the house of Pericles for an unlawful purpose. (Plutarch, Vit. Pericl. 32.) As to the punishment inflicted for nameless offences, and the civic disabilities to which they subjected the parties who had been guilty of them, the scholar may (if he pleases) consult the Oration of Æschines against Timarchus, especially pages 2 and 3; also the arguments to the Orations on the Embassy and against Androtion, pages 146—149, 244, of this volume, and the Attic process of Meier and Schömann, p. 332.

THEFT, ROBBERY, ETC.

It has been already shown that theft might be dealt with as a civil offence by the party injured, though even then it drew with it some penal consequences, as a verdict against the thief was attended with disfranchisement. (Ante, p. 147, note.) The distinction drawn by the Athenians between thefts under fifty drachms and thefts above that sum reminds us of the ancient distinction in our own country between grand and petty larceny.[2] The increased severity with which they punished for stealing at night, or in the public baths, the gymnasia, or the harbours, was founded upon obviously good reasons. The like difference is now made by us between simple and compound larceny; for example, we have distinctive punishments for stealing from a master, stealing in a dwelling-house, stealing from the person, highway robbery, burglary, &c. The Athenians had names much like our own for the highway-robber,[3] the housebreaker,[4]

(1) The charge was called ἀδίκως εἱρχθῆναι ὡς μοιχόν. See the Oration against Neæra, 1367. Meier and Schömann, Att. Proc. 327—332. Bekker's Charicles, scene 2

(2) Grand larceny, or stealing above the value of twelve pence, was by the common law punishable with death. The distinction between grand and petty larceny was abolished in the reign of George IV.

(3) Λωποδύτης. (4) Τοιχώρυχος.

and the pickpocket.[1] The tomb-breaker[2] was one who broke open the graves to rob the dead. All such persons were called by the common name of malefactors.[3] Sacrilege might be dealt with under the laws against impiety, with especial reference to the desecration of the sanctuary, or it might be treated as a species of compound robbery. There is an Oration of Lysias entitled "The defence of Callias for sacrilege:" it is but a fragment however, and gives us no information upon the subject.

The private suits and minor charges of theft were tried before the Thesmothetæ. Robberies of the more heinous kind were cognizable by the Eleven. It was lawful for the party robbed, either with or without assistance, to seize the person of the robber and carry him at once before the magistrate; or, if he was afraid to do so, he might procure the assistance of the magistrate to take him into custody. If the prisoner confessed the crime, the Eleven might put him to death without any delay: this remarkable difference between the Athenian practice and our own I have had occasion to advert to before, (Vol. II. p. 204.) If he did not confess, the Eleven brought him to trial before a jury.[4]

Kidnapping[5] also belongs to this class of offences. It might be expected that the Athenians, who attached such importance to the title of free citizen, would severely punish any one who sold a freeman for a slave. The Thessalians are said to have been addicted to this practice.[6] Among the Jews it was a capital crime, as we read in Exodus, ch. xxi. ver. 16.—"And he that stealeth a man and selleth him, or if he be found in his hand, he shall surely be put to death." —And the like in Deuteronomy, ch. xxiv. ver. 7. Kidnapping was called *plagium* by the Romans, and was the subject of penal statutes. In England we have statutory punishments for stealing children under ten years of age.

Further, those impostors, who practised upon ignorant persons by jugglery or quackery, were liable under the Athenian law to be treated as malefactors, and were punishable even with death, if the jury chose to inflict it.[7] And with this we may compare our own statutes, under which persons are liable to be imprisoned as rogues and vagabonds, who "pretend to tell fortunes or use any subtle device by palmistry or otherwise to impose on her Majesty's subjects,"—though it is rare at this day to see a man tried for any such offence.[8]

(1) Βαλαντιοτόμος, literally, *cutpurse.*
(2) Τυμβώρυχος. (3) Κακοῦργοι.
(4) See ante, p. 154, note 3. Meier and Schömann, Att. Proc. 356—361.
(5) 'Ανδραποδισμός. See Schömann, Antiq. Juris. Publici, p. 186. Att. Proc. 228.
(6) Aristophanes, Plutus, 521.—

κερδαίνειν βουλόμενός τις
ἔμπορος ἥκων ἐκ Θετταλίας παρὰ πλειστῶν ἀνδραποδιστῶν.

(7) Demosthenes, Cont. Aristog. 793, 794. Meier and Schömann, Att. Proc. 233.
(8) I myself however in the year 1852 prosecuted and convicted a man at Walsall, who had obtained money under the pretence of fortune-telling.

ASSAULT, BATTERY, ETC.

For all gross assaults to the person the Athenian law allowed a criminal prosecution. Any blow given wantonly and intentionally to a freeman was an offence of this description, the insult forming the *gravamen* of the charge. The legal term for the offence was *ὕβρις*, which denoted any personal outrage, including rape and indecent assaults. (See ante, p. 73, where all this is fully explained.) Demosthenes might have indicted Midias for the assault upon his person at the theatre; but he chose to view it in a more serious light, and to bring it before the people, as a contempt of the festival.

The party who had received blows might waive the criminal charge, if he pleased, and bring an action to recover damages, (ante, p. 77, note 1.)

The law cited by Demosthenes and praised by him for its humanity, (ante, p. 81,) which made it indictable to commit a personal outrage upon a slave, is probably to be understood of indecent assaults only; though it did not suit the orator's argument as to notice the distinction. The language of Aristotle in his Rhetoric,[1] well as another passage of Demosthenes himself (Cont. Nicostratum, 1251), favours this view of the matter. And looking at the condition of slaves and the estimation in which they were regarded, in Athens as well as other parts of Greece, we can hardly suppose that it would be made a crime in a citizen to strike them: though undoubtedly for any injury done to a slave by blows or otherwise his master had a right of action. (See Meier and Schömann, Att. Proc. 325.)

ILL-TREATMENT OF PARENTS, WIVES, ETC.

Certain wrongs done to parents by their children, to wives by their husbands, to orphans by their guardians and relations, were punishable at Athens by the criminal law.[2]

To strike a parent was a heinous offence; likewise, to use abusive language to him; to refuse to maintain him in indigence, and to neglect the duty of burial. Misfeasances of this kind were punishable either with death or otherwise at the discretion of the jury, and were always attended with disfranchisement.[3]

(1) Aristot. Rhet. ii. 24, 9. ἢ εἴ τις φαίη, τὸ τύπτειν τοὺς ἐλευθέρους ὕβριν εἶναι· οὐ γὰρ πάντως, ἀλλ' ὅταν ἄρχῃ χειρῶν ἀδίκων.

(2) By γραφαὶ κακώσεως γονέων, γυναικῶν, ὀρφανῶν, &c.

(3) See Aristophanes, Aves, 1344.—

Πατραλοιας.

ὀρνιθομανῶ γὰρ καὶ πέτομαι, καὶ βούλομαι
οἰκεῖν μεθ' ὑμῶν, κἀπιθυμῶ τῶν νόμων.

Πεισθεταιρος.

ποίων νόμων; πολλοὶ γὰρ ὀρνίθων νόμοι.

Πατρολοιας.

πάντων· μάλιστα δ' ὅτι καλὸν νομίζεται
τὸν πατέρα τοῖς ὄρνισιν ἄγχειν καὶ δάκνειν.

Πεισθεταιρος.

καὶ νὴ Δί' ἀνδρεῖόν γε πάνυ νομίζομεν,
ὃς ἂν πεπλήγῃ τὸν πατέρα νεοττὸς ὤν.

Πατραλοιας.

The *patria potestas* of the Romans, who had the power of life and death over their children, was much more severe than that of the Athenians. Among the Jews it was a capital crime to curse a father or mother: (Exodus, ch. xxi. ver. 17:) and for disobedience to his parents a son might be stoned to death, upon accusation before the elders of the city. (Deuteronomy, ch. xxi. ver. 18, &c.) The compulsory maintenance reminds one of our own statute, (43rd Elizabeth,) requiring children with sufficient means to relieve their parents who are old and impotent.

Husbands were liable to prosecution for neglect of their marriage duties: a proceeding similar to the suit in our ecclesiastical courts for restitution of conjugal rights.

With respect to widows and orphans, the legislation of Solon was certainly in the spirit of the Divine command to the Jews:—"Ye shall not afflict any widow or fatherless child." (Exodus, ch. xxii. ver. 22.) All such persons were under the special protection of the Archon. Guardians were indictable for any breach of trust or duty to their wards; as for neglecting their maintenance and education, or not managing their property to the best advantage.[1] So was the next of kin who refused either to marry, or to endow with a suitable portion, the poor orphan girl, whom the Attic law called heiress of her fathers house. Disfranchisement or even severer punishments attended the breach of these duties, besides pecuniary compensation for any fraud which had been committed.[2]

The reader has now before him a synopsis (not pretended indeed to be a complete one) of the Athenian criminal code. He understands also that, with the exception of trials by the Areopagus, almost all criminal charges were brought before a jury drawn from the body of the people, as shown in Vol. II. Appendix VII, and empannelled as shown in a note in the same volume, page 81. The necessary preparations for a hearing by the jury were made by the magistrate, or board of magistrates, to whose jurisdiction the particular case belonged; and the same person, or the same board, presided at the trial. Thus the nine Archons presided in those cases of which they

Πατραλοιας.

διὰ ταῦτα μέντοι δεῦρ' ἀνοικισθεὶς ἐγὼ
ἄγχειν ἐπιθυμῶ τὸν πατέρα, καὶ πάντ' ἔχειν.

Πεισθεταιρος.

ἀλλ' ἔστιν ἡμῖν τοῖσιν ὄρνισιν νόμος
παλαιὸς ἐν ταῖς τῶν πελαργῶν κύρβεσιν,
ἐπὴν ὁ πατὴρ ὁ πελαργὸς ἐκπετησίμους
πάντας ποιήσῃ τους πελαργιδεῖς τρέφων,
δεῖ τους νεοττοὺς τὸν πατέρα πάλιν τρέφειν.

Πατρολοιας.

ἀπέλαυσά τἄρ' ἂν νὴ Δί' ἐλθὼν ἐνθαδί,
εἴπερ γέ μοι καὶ τὸν πατέρα βοσκητέον.

Compare v. 757, and Lysias cont. Agoratum, 138.

(1) By γραφὴ ἐπιτροπῆς, or by a special indictment called γραφὴ μισθώσεως οἴκου.

(2) See Meier and Schömann, Att. Proc. 288—294. Schömann, Ant. Jur. Publ 195, 343.

and judicial cognizance respectively—the Generals upon trials for breach of the military law—the Eleven upon trials for robbery—the Auditors upon charges against public officers for not rendering their account, &c.—the Overseers of the Port upon trials for breach of the commercial laws—while sometimes extraordinary functionaries were appointed to conduct some special inquiry, as the Syndics to try disputes concerning confiscated property.[1] The judicial duty of all these magistrates was chiefly matter of form and routine. In cases of small moment they had power sometimes to impose a small fine: in other cases, where the accused denied the charge preferred against him, they were obliged to bring it before a jury for decision.

In this Appendix there remains to consider—

I. The parties who might be prosecutors of criminal accusations:
II. The process by which they were carried on:
III. The sentence of the court:
IV. The execution.

I. There was no regular public prosecutor at Athens, any more than there is with us. The task of accusing was left to private individuals. It might sometimes be the duty of a magistrate to cause the law to be put in force; for example, it was the Archon's duty to protect widows and orphans, and to take up their cause against oppressors. Yet the forms of law would not permit him to appear as prosecutor in court, where he had to exercise a judicial authority: and wherever a magistrate came forward to accuse *ex officio,* some prosecutor seems to have been appointed for the purpose, as in the case of Antiphon and his colleagues, who were impeached by the Generals.[2] The policy of the Athenian law required that there should be an actual prosecutor, who was a party to the cause, who conducted it in court, and who was responsible generally for the consequences: herein differing from the practice of our country, where the Crown is the only party ostensibly opposed to the criminal, while he who prefers the charge, and who is commonly the party injured, either keeps out of sight entirely, or appears only as a witness. There was no such thing at Athens as the state prosecuting: it was not the Republic against Ctesiphon, but Æschines against Ctesiphon, both in name and reality.

Those cases stand on special grounds, in which Inquisitors were appointed to discover and bring to justice the perpetrators of some flagrant crime, as on the occasion when the Hermes busts were mutilated: (Thucydides VI. 27, Andocides, De Myst. 3—5:) and those where accusers or advocates were nominated by the people under the influence of some strong excitement: as when Pericles was directed to assist in the impeachment of Cimon; (Plutarch. Vit. Pericl. 10;) and Stratocles with others to prosecute Demosthenes:

(1) See my article Σύνδικοι in the Archæological Dictionary.
(2) See Schömann, De Comitiis, 171, 203, 204; Meier and Schömann, Att. Proc. 66, 268.

(Dinarchus, cont. Demosth. 96.) Again, in cases of homicide, as we have seen, the relatives of the deceased were called upon, and they only were the proper persons, to bring the offender to trial. Ordinarily however the office of prosecutor was left to be undertaken by volunteers.

In the majority of cases the party injured would naturally be the accuser: he, for example, whose house had been robbed, or whose person assaulted. An alien as well as a citizen was competent to prefer an accusation in such case.[1] But independently of this, any citizen might come forward as prosecutor on behalf of the public, who was of full age, and in possession of his franchise, not having lost it by verdict or by infamous practices.[2] Nor was it found that there was any lack of accusers under the voluntary system. If patriotism and public spirit did not afford sufficient motives, private enmity or the hope of reward supplied their place. To avenge a former wrong done to the accuser or to his family was, according to Athenian ways of thinking, a legitimate ground for undertaking a criminal charge.[3] (See the exordium of the Oration against Androtion,

(1) Meier thinks that there were some cases (besides that of homicide) where only the injured party or his representatives could prosecute; as charges of theft and adultery, false swearing to a summons, false entry of debtors in the register. (Att. Proc. p. 164.)

(2) The law thus expressed it: *γραφέσθω Ἀθηναίων ὁ βουλόμενος οἷς ἔξεστιν.* See Æschines, cont. Timarch.; Demosthenes, cont. Mid. 529; cont. Timocr. 720.

(3) Unless the accuser could show some apparent motive, such as his being a friend of the aggrieved party, or the desire of revenging a former injury, his motives were always liable to be questioned. The reproach of *συκοφαντία* was sure to be cast upon him by the adversary; and though the principle of the law was, to encourage men to take up the public cause, the jury did not readily believe that an accuser was influenced purely by zeal for the public service. Lycurgus, than whom no man better deserved the name of a patriot, or had a higher reputation as one, in the opening part of his Oration against Leocrates lays down the true principles upon which the duty of prosecution was founded:—

Ἐβουλόμην δ' ἄν, ὦ ἄνδρες, ὥσπερ ὠφέλιμόν ἐστί τῇ πόλει εἶναι τοὺς κρίνοντας ἐν ταύτῃ τοὺς παρανομοῦντας, οὕτω καὶ φιλάνθρωπον αὐτὸ παρὰ τοῖς πολλοῖς ὑπειλῆφθαι· νῦν δὲ περιέστηκεν εἰς τοῦτο, ὥστε τὸν ἰδίᾳ κινδυνεύοντα καὶ ὑπὲρ τῶν κοινῶν ἀπεχθανόμενον οὐ φιλόπολιν ἀλλὰ φιλοπράγμονα δοκεῖν εἶναι, οὐ δικαίως οὐδὲ συμφερόντως τῇ πόλει. τρία γάρ ἐστι τὰ μέγιστα, ἃ διαφυλάττει καὶ διασώζει τὴν δημοκρατίαν καὶ την τῆς πόλεως εὐδαιμονίαν, πρῶτον μὲν ἡ τῶν νόμων τάξις, δεύτερον δ' ἡ τῶν δικαστῶν ψῆφος, τρίτον δ' ἡ τούτοις τἀδικήματα παραδοῦσα κρίσις. ὁ μὲν γὰρ νόμος πέφυκε προλέγειν ἃ μὴ δεῖ πράττειν, ὁ δὲ κατήγορος μηνύειν τοὺς ἐνόχους τοῖς ἐκ τῶν νόμων ἐπιτιμίοις καθεστῶτας, ὁ δὲ δικαστὴς κολάζειν τοὺς ὑπ' ἀμφοτέρων τούτων ἀποδειχθέντας αὐτῷ, ὥστ' οὔθ' ὁ νόμος οὔθ' ἡ τῶν δικαστῶν ψῆφος ἄνευ τοῦ παραδώσοντος αὐτοῖς τοὺς ἀδικοῦντας ἰσχύει. Ἐγὼ δέ, ὦ Ἀθηναῖοι, εἰδὼς Λεωκράτην φυγόντα μὲν τοὺς ὑπὲρ τῆς πατρίδος κινδύνους, ἐγκαταλιπόντα δὲ τοὺς αὑτοῦ πολίτας, προδεδωκότα δὲ πᾶσαν τὴν ὑμετέραν δύναμιν, ἅπασι δὲ τοῖς γεγραμμένοις ἔνοχον ὄντα, ταύτην τὴν εἰσαγγελίαν ἐποιησάμην, οὔτε δι' ἔχθραν οὐδεμίαν οὔτε διὰ φιλονεικίαν οὐδ' ἡντινοῦν τοῦτον τὸν ἀγῶνα προελόμενος, ἀλλ' αἰσχρὸν εἶναι νομίσας τοῦτον περιορᾶν εἰς τὴν ἀγορὰν ἐμβάλλοντα καὶ τῶν κοινῶν ἱερῶν μετέχοντα, τῆς τε πατρίδος ὄνειδος καὶ πάντων ὑμῶν γεγενημένον. πολίτου γάρ ἐστι δικαίου μὴ διὰ τὰς ἰδίας ἔχθρας εἰς τὰς κοινὰς κρίσεις καθιστάναι τοὺς τὴν πόλιν μηδὲν ἀδικοῦντας, ἀλλὰ τοὺς εἰς τὴν πατρίδα τι παρανομοῦντας ἰδίους ἐχθροὺς εἶναι νομίζειν, καὶ τὰ κοινὰ τῶν ἀδικημάτων κοινὰς καὶ τὰς προφάσεις ἔχειν τῆς πρὸς αὐτοὺς διαφορᾶς.

Compare Aristophanes, Plutus, 907:—

Συκοφάντης.
τῶν τῆς πόλεώς εἰμ' ἐπιμελητὴς πραγμάτων,
καὶ τῶν ἰδίων πάντων.

[Χρεμυλος

and that against Nicostratus.) In certain cases a portion of the penalty was given by law to the prosecutor; as upon indictments for the unlawful cohabitation of Athenians with foreigners, and for some other offences of the like description; where, after conviction of the defendant, a third of his confiscated property went to the accuser: (Demosthenes, cont. Neæram, 1350, 1363:)—upon informations for carrying corn to foreign countries, where the informer got half the penalty: (Demosthenes, cont. Theocrinem, 1325:)—likewise upon charges for destroying olive-trees: (Demosthenes, cont. Macartatum, 1074:)—and upon revenue prosecutions, where the person who gave information of property belonging to the state was entitled to a portion of it, if he succeeded: (Demosthenes, cont. Nicostratum, 1247.) Such a motive for prosecuting, though encouraged by law, did not recommend itself to the favour of a jury. The informer, as with ourselves, was always looked coldly upon.

It was not an unusual thing for two or more persons to join in a prosecution; and in such case they divided between them the conduct of the case, and shared both the reward (if there was any) and the responsibility. Thus Euctemon and Diodorus together indicted Androtion. Ctesippus and Aphepsion jointly carried on the proceedings to repeal the law of Leptines.[1]

As the prosecutor was presumed to be a person acting for the public good, he had no court fees to pay like a plaintiff in a private

Χρεμυλος.
σύ; τί μαθών;

Συκοφαντης.
βούλομαι.

Χρεμυλος.
πῶς οὖν ἂν εἴης χρηστὸς ὦ τοιχωρύχε,
ἵ σοι προσῆκον μηδὲν, εἶτ' ἀπεχθάνει;

Συκοφαντης.
οὐ γάρ προσήκει τὴν ἐμαυτοῦ μοι πόλιν
εὐεργετεῖν μ' ὦ κέπφε καθ' ὅσον ἂν σθένω;

Χρεμυλος.
εὐεργετεῖν οὖν ἐστι τὸ πολυπραγμονεῖν;

Συκοφαντης.
τὸ μὲν οὖν βοηθεῖν τοῖς νόμοις τοῖς κειμένοις
καὶ μὴ 'πιτρέπειν ἐάν τις ἐξαμαρτάνῃ.

Χρεμυλος.
οὔκουν δικαστὰς ἐξεπίτηδες ἡ πόλις
ἄρχειν καθίστησιν;

Συκοφαντης.
κατηγορεῖ δὲ τίς;

Χρεμυλος.
ὁ βουλόμενος.

Συκοφαντης.
οὐκοῦν ἐκεῖνός εἰμ' ἐγώ.
ὥστ' εἰς ἔμ' ἥκει τῆς πόλεως τὰ πράγματα.

(1) See Schömann, Ant. Jur. Publ. 270. Meier and Schömann, Att. Proc. 655, &c.

action, but only a nominal sum of a drachm upon the occasion of preferring a charge.[1] There was an exception however in those cases where a pecuniary reward followed the conviction of the accused; in which the prosecutor was regarded in the light of a private plaintiff, and had to pay the court fees. Thus the statute above cited, which gave half the penalty to the accuser upon a conviction for destroying olive-trees, directs that he pay the court fees. In order to prevent frivolous and vexatious proceedings, it was enacted that any man who dropped a prosecution which he had commenced, or who upon the trial failed to get one-fifth of the votes, should pay a penalty of a thousand drachms, and be disabled to bring any similar charge in future. Such disability was a partial deprivation of a man's civic rights, and was accordingly termed a limited disfranchisement. No such risk however was run upon impeachments for ill-usage of parents and orphans, which were peculiarly encouraged by the law. But in cases which partook of the nature of private suits the prosecutor, if he failed to get a fifth of the votes, was liable, as a plaintiff was, to pay a sixth part of the penalty sought to be recovered.[2]

A further check to groundless accusations was provided by the law against pettifoggery already referred to.

II. We are to consider the methods of proceeding against criminals, which were prescribed by the Athenian law. Of these there were several kinds; and a prosecutor frequently had his choice between two or more of them, each of which offered its own particular advantages. It was the policy of the law to give every facility for attaining the ends of justice, and therefore it allowed various remedies against the wrongdoer. (See the remarks of Demosthenes upon the subject, ante, p. 147.)

The processes most commonly resorted to were, Indictment, Arrest, Information, Presentment, Impeachment, Plaint to the Assembly.

INDICTMENT.

Graphe, the Greek term which is thus translated, signifies both the bill of indictment, and the whole process.[3] And in this respect it corresponds with the English term, which is used in the like double sense. But the process of the Athenians by no means coincides with our own. In England the party indicted has usually been committed for trial by the magistrate: the bill of indictment is then

(1) This was called παράστασις. The court fees were called πρυτανεῖα, of which more will be said in the next Appendix.

(2) The ἐπωβελία. See upon these points, which are somewhat obscure, Böckh's Public Economy of Athens, Trans. II. 69, &c. 80, 108, &c. Meier and Schömann, Att. Proc. 614, &c. 623, 732, &c.

(3) Γραφὴ was sometimes used in a wider sense, agreeably to its etymology, to signify any statement of a charge in writing, even the plaint in a civil suit, as in Demosthenes against Aphobus, p. 817. Ἀντιγραφὴ and παραγραφὴ have no necessary connexion with indictments.

carried before the grand jury, and, if they find it a true bill, he is tried upon it. The Athenian indictment did not follow any previous committal. The accused party was only summoned to attend before the magistrate: a bill was then preferred against him,[1] which he was called upon to answer in the same way as a defendant in an action. He could not even be required to give bail for his appearance, unless he were an alien: and to this an alien was liable in a private suit. However serious the charge against the party indicted—though it were one upon which even a capital sentence might be passed—the method of bringing him to trial was in the nature of a civil proceeding.

He was summoned by the prosecutor in the presence of witnesses,[2] commonly of two. A day was named for his attendance, generally about the fifth day from the summons. If he failed to attend, and the summons was duly proved, the magistrate received the charge in his absence, and judgment might in due course be pronounced against him by default. If he attended, and the charge was proceeded with, the magistrate inquired into the circumstances, and, if he thought the charge was maintainable, adopted the necessary measures for bringing it to trial. The bill of indictment was handed in by the prosecutor; or at least the heads of one, which was afterwards reduced to a legal form. It contained the date of the prosecution, the names of the parties and of the witnesses to the summons, a statement of the charge, and the proposed penalty. We may take for a specimen the indictment against Ctesiphon, set forth in the Oration on the Crown: for, even if that document be not genuine, it is probably drawn up in the accustomed form. A short abstract of the charge was written on a board by the magistrate, and hung up in some conspicuous place, to give public notice that it was pending for trial. Such a notice of Euctemon's indictment against Demosthenes was posted before the statues of the Heroes, near to the board-room of the Generals, (ante, p. 99.)

This mode of prosecution was applicable to most cases, and was the most frequently adopted. We have three examples in the present volume.[3]

ARREST.

This, which we regard as an ancillary measure upon most criminal prosecutions, to secure the person of the accused, was at Athens a distinct process, which might be resorted to at the option of the prosecutor, where he thought that the urgency of the occasion or the heinousness of the offence required it. *Apagoge*, or arrest, as a

(1) The prosecutor was said ἐπιφέρειν or ἐπάγειν γραφήν, with reference to the accused; and, with reference to the magistrate, διδόναι, προσφέρειν, or ἀποφέρειν γραφὴν πρὸς τὸν ἄρχοντα, or πρὸς τοὺς στρατηγούς, &c.

(2) They were called κλητῆρες. Of the γραφὴ ψευδοκλητείας I have already spoken (ante, p. 344.) Its necessity and importance are apparent.

(3) See Meier and Schömann, Att. Proc. 197, 575, 594, &c.

term of Attic procedure, was only then strictly applied, when the accuser took the law into his own hands by seizing the criminal and carrying him before the magistrate. Wherever this course was lawful, the party intending to arrest was under no necessity to procure the warrant of a magistrate; though, if he were afraid to attempt it alone, the more prudent course was to apply for official aid, and the magistrate, to whose jurisdiction the charge appertained, was bound to render him all the assistance in his power.[1]

The occasion upon which it was most usual and proper to apprehend the criminal, was, where he was caught *flagrante delicto*. For example, where a robber was caught in the act of robbery, or with the thing stolen upon him—*taken with the mainour*, as our old law expressed it—the party robbed carried him before the Eleven, and gave him into their charge. If he confessed immediately, the Eleven, as we have seen, might put him to death without further trouble, just as under the old Danish law, which was in force in this country, a robber so taken might be hanged on the spot.[2] If he denied the charge, the Eleven held him in custody until the day of trial, unless they chose to accept bail for his appearance, which it seems they might do upon tender of three sufficient sureties. The prosecutor preferred his charge in writing,[3] in the same manner as upon an indictment; and the preparations for trial were in other respects mostly the same.

The persons against whom the proceeding by arrest was allowable were all those whom the Attic law designated as malefactors, such as robbers, housebreakers, &c.; also those who unlawfully usurped civic rights, or returned from banishment without permission; those charged with impiety, pettifoggery, ill-usage of parents or orphans, and some others. Murder did not subject the party to arrest, unless it were accompanied with robbery or other atrocious circumstances; as in the case of Antiphon's client charged with the murder of Herodes, (see ante, p. 335,) and that of Agoratus, who, having acted as informer under the Thirty Tyrants, and caused many innocent Athenians to be put to death, was afterwards apprehended and prosecuted by Dionysius, brother to one of the sufferers, in conjunction with the client of Lysias. But murder stood on a peculiar footing at Athens, being regarded as an injury to the relatives of the deceased rather than to the public, though in a religious aspect it was a pollution to the city; and therefore the accused, as we have seen, was left commonly at large, and might go into voluntary exile, if he did not wish to stand his trial.[4]

(1) When the accuser led the magistrate or his officers to the spot where the culprit was to be found, and directed them to take him into custody, it was called in the language of the law ἐφήγησις.

(2) This was abolished in the reign of Edward III. See Blackstone's Com. iv. 307.

(3) The charge itself was called ἀπαγωγή. See Lysias, cont. Agoratum, 137. ἐπ' αὐτοφώρῳ τῇ ἀπαγωγῇ ἐπιγέγραπται: and 138, οἱ Ἕνδεκα οἱ παραδεξάμενοι τὴν ἀπαγωγὴν ταύτην.

(4) See Meier and Schömann Att. Proc. 224, 582.

INFORMATION.

Endeixis, or Information, was pretty much the same course as that which an Englishman takes, who lays a charge of felony before a justice of the peace, and obtains his warrant to arrest the felon. Instead of taking the law into his own hands, as in the process last mentioned, the Athenian simply put the law in motion by applying to the proper authority, who, upon receiving the charge in writing, and seeing that a *primâ facie* case was made out by the informant, was bound to take measures for apprehending the accused party and bringing him to trial. The cases to which the *Endeixis* applied were the same as those to which the *Apagoge* did: only in the latter the prosecutor knew where to find or how to catch the defendant; in the former he did not know, and therefore left the magistrate to do that part of the business.

The proceeding by Information was most frequently and with peculiar propriety adopted against state-debtors or disfranchised persons, who exercised the rights from which the law excluded them, and against exiles who returned home clandestinely without having procured a revocation of their sentence.[1] It lay also against Presidents of the Council, who neglected to convene the assembly, or to submit to them the annual revision of the statutes, or to take their votes upon a question duly brought before them. There are three extant orations against persons brought to trial by this process: the Oration of Lysias against Andocides on the subject of the Mysteries, and those of Demosthenes against Aristogiton and Theocrines, who are accused of having spoken in the assemblies and courts of justice before they had paid their debts to the state.[2]

PRESENTMENT.

As we have rendered *Endeixis* Information, we must for the sake of convenience find another word for *Phasis;* and therefore let us call it Presentment.[3] This was a proceeding, which in most respects resembled an Indictment; but the name was specially given to prosecutions which concerned the revenue; as for offences against the mine laws or the customs, embezzlement or illegal appropriation of public monies, and false accusations against other people relating to such matters. Charges for carrying corn to a foreign port, and

(1) See the Oration against Aristocrates, ante, p. 183. Homicides who were seen walking about in the temple or the market might be arrested forthwith. (Ante, p. 193.)

(2) Meier and Schömann, Att. Proc. 239, &c. Schömann, De Comit. 172, 173.

(3) The word φαίνω signifies to inform, and is sometimes used in a general sense without reference to the particular process; as seemingly in Aristophanes, Equites, 300.

> καὶ φανῶ σε τοῖς πρυτάνεσιν
> ἀδεκατεύτους τῶν θεῶν ἱε-
> ρὰς ἔχοντα κοιλίας.

Hence the origin of the term συκοφάντης. See what I have said under title Φάσις in the Archæological Dictionary.

for lending money on a ship which did not bring a return cargo to Athens, were the subject of a Presentment before the Overseers of the Port. In many of these cases reward or compensation was given to the successful prosecutor, and therefore, as he was not purely a vindicator of public justice, but held in some measure the character of a private plaintiff, he had to pay the court fees, and was liable to a sixth part of the penalty on failure to obtain a fifth of the votes.

Guardians who defrauded their wards might be presented to the Archon by any one who had public spirit enough to prosecute. The law encouraged men to take up the cause of oppressed orphans: the penalty in such cases was the amount of damage which had been done, and it went to the orphan, not to the state.

It seems to have been this peculiarity, viz., that the penalty was either shared between the state and the prosecutor, or went wholly to the injured party, which distinguished the process of presentment from that of indictment. For it is clear from Demosthenes (cont. Theocrinem, 1324) that the formal proceedings, such as the summons of the defendant, the delivery of the charge in writing, and the preparations for trial, were the same.

No speech upon a trial of this kind has come down to us, though the process is often mentioned by the orators, as by Demosthenes against Theocrines, and Isocrates against Callimachus, (p. 372.)

IMPEACHMENT.

Eisangelia, or Impeachment, was a remedy reserved for those offences which were either not defined by the criminal code,[1] or were of so heinous and dangerous a character, as to call for an extraordinary adjudication; such as high crimes against the state, delinquencies by magistrates and persons placed in important trust for the public. In most countries there have been methods out of the usual course of law for punishing great and enormous offenders. In England this has been occasionally effected by bills of pains and penalties; but the most constitutional process is that of impeachment, which (to use the language of Blackstone, Comment. IV. 259) is "a present-

(1) These are the ἄγραφα ἀδικήματα of the grammarians. Suidas defines an impeachment thus:—

Εἰσαγγελία κυρίως ἡ περὶ καινῶν καὶ δημοσίων ἀδικημάτων εἰσαγομένη δίκη ὑπὸ τῶν Πρυτανέων, περὶ ὧν διαῤῥήδην μὲν οὐδὲν λέγουσιν οἱ νόμοι, συγχωροῦσι δὲ κρίσεις γενέσθαι. καὶ τοῦτό ἐστιν οἷον τὸ ἐν ταῖς τῶν Σοφιστῶν διατριβαῖς μελετώμενον, τὸ τῶν ἀγράφων ἀδικημάτων.

And Lycurgus, in his speech on the impeachment of Leocrates, p. 148, says:—

"Απαντας μὲν οὖν χρὴ νομίζειν μεγάλους εἶναι τοὺς δημοσίους ἀγῶνας, μάλιστα δὲ τοῦτον ὑπὲρ οὗ νῦν μέλλετε τὴν ψῆφον φέρειν. * * * Οὕτω γάρ ἐστι δεινὸν τὸ γεγενημένον ἀδίκημα καὶ τηλικοῦτον ἔχει τὸ μέγεθος, ὥστε μηδὲ ἐν τοῖς νόμοις ὡρίσθαι τιμωρίαν ἀξίαν τῶν ἁμαρτημάτων. * * * Διὸ καὶ μάλιστα, ὦ ἄνδρες, δεῖ ὑμᾶς γενέσθαι μὴ μόνον τοῦ νῦν ἀδικήματος δικαστὰς ἀλλὰ καὶ νομοθέτας. ὅσα μὲν γὰρ τῶν ἀδικημάτων νόμος τις διώρικε, ῥᾴδιον τούτῳ κανόνι χρωμένους κολάζειν τοὺς παρανομοῦντας· ὅσα δὲ μὴ σφόδρα περιείληφεν ἑνὶ ὀνόματι προσαγορεύσας, μείζω δὲ τούτων τις ἠδίκηκεν, ἅπασι δὲ ὁμοίως ἔνοχός ἐστιν, ἀναγκαῖον τὴν ὑμετέραν κρίσιν καταλείπεσθαι παράδειγμα τοῖς ἐπιγιγνομένοις.

See Schömann, De Comitiis, 180, &c. Meier and Schömann, Att. Proc. 260, &c.

ment to the supreme court of criminal jurisdiction by the grand inquest of the whole kingdom," and is generally adopted against ministers of the crown or other statesmen who have been guilty of unconstitutional and corrupt practices. The Athenian process, which we have designated by the same title, resembled it in this respect, that the accusation was presented in the first instance, not to any of the ordinary magistrates, but either to the sovereign people in assembly, or (which was more usual) to their deputies in the Council; by one or the other it was usually sent to a judicial tribunal, whose verdict was final.

When an impeachment was preferred to the Council of Five-hundred, they first examined the articles (which were required to be in writing), and, if they thought there was a *primâ facie* case, they inquired further into it, in order to satisfy themselves whether they ought to *find a true bill* against the accused. If their sentence was in favour of the impeachment (which was not always arrived at without a division), they passed a resolution to that effect; of which their secretary gave notice to the Thesmothetæ, and it became the duty of those magistrates to bring the case for trial before a jury. Meanwhile the defendant was given into the custody of the Eleven and remained in prison, unless the Council chose to accept bail for his appearance. The Council were themselves competent to impose a fine not exceeding five hundred drachms; but it rarely happened that impeachable offences could be thus summarily dealt with.

If the charge was of such importance as to make it desirable, before sending it for trial, to obtain the concurrence of the people, the Council might convene them for that purpose: indeed it was open to the accuser to prefer his impeachment before the popular assembly in the first instance; and there was a regular time for doing so, viz., the first ordinary assembly of each Presidency. The people were competent, if they pleased, to decide upon the whole question in assembly; upon the reception of the impeachment, the guilt or innocence of the accused, and the sentence which he deserved. The most constitutional course, upon their receiving the impeachment, was, to order it to be tried before the judicial body, which then generally consisted of a thousand jurors, presided over by the Thesmothetæ: and advocates were appointed to assist in the conduct of the prosecution, who were paid a fee of a drachm each from the treasury.[1] But the people, as I have said, might try the case themselves; or they might direct any special mode of trial. Whatever course was adopted, a preliminary decree was passed containing the necessary order. The case of the Generals, who were tried and condemned by the assembly for their culpability and negligence at Arginusæ, is thought by Schömann[2] to have been a case of impeachment: yet

(1) To this Aristophanes alludes, Vespæ, 691:

αὐτὸς δὲ φέρει τὸ συνηγορικὸν, δραχμὴν, κἂν ὕστερος ἔλθῃ.

Upon which, see the Scholiast—and Schömann, De Comitiis, 210, note.

(2) De Comitiis, 206.

neither Xenophon nor Diodorus in speaking of that event makes use of the term *impeachment*, and the proceedings were altogether so irregular, that we cannot take them as any example of what would occur in the due course of law.

Among the instances enumerated as the legitimate subjects of impeachment are, those of orators or statesmen attempting to overturn the constitution, or giving pernicious counsel to the people—men going off to the enemy without orders, or betraying the troops, ships, or garrisons of the country—generals guilty of gross misconduct in their command.[1] These of course are only examples. It was reasonable enough, that the people should mark their sense of heinous crimes against the state by assigning to them extraordinary modes of trial, even though they might have been reached—as we cannot doubt that almost every crime at Athens could be reached—by the ordinary processes of law. Schömann however observes—not without some justice—that the inadequacy of the common processes to meet the exigency of the case was often needlessly urged by vexatious accusers, who, in bringing crimes of no very serious complexion before the Council or the Assembly, sought only to secure a prejudice in their own favour, and to cast an unfair odium upon the adversary. We have three extant orations upon this kind of trial, and mention of divers cases by ancient writers; from which we get a little insight into the Athenian practice.

Alcibiades was impeached before the Council upon the double charge of a treasonable conspiracy and of having profaned the Mysteries.[2] It had first been made in the assembly, and not favourably entertained; but afterwards it was renewed in his absence, and ultimately sent for trial before a court, which pronounced judgment against him by default, and sentenced him to death.

Antiphon, Archeptolemus, and Onomacles were impeached before the Council, after the deposition of the Oligarchy, of which they had been active members. The articles against them were—that they had gone upon a treasonable embassy to Sparta—that they had sailed in an enemy's ship—and that they had passed through the enemy's camp at Decelea. The Council passed a special decree, ordering them to be arrested and tried by a jury; directing that the Thesmothetæ should hold the trial on the following day; that the Generals, who had first preferred the charge, together with ten members to be nominated from the Council, should bring the prisoners into court, and conduct the prosecution with the assistance of any other person who liked to come forward; and that whichever was found guilty

(1) See ante, pp. 28, 29, and Schömann, De Comitiis, 189.

(2) Isocrates, De Bigis, 347, 348. The words εἰσήγγελλον εἰς τὴν βουλὴν most probably denote an impeachment strictly so called; and are confirmed by Plutarch in the Life of Alcibiades, 22. Thucydides (vi. 28, 53, 61) does not use the term εἰσαγγέλλειν, yet his words in chapter 61, οἱ δ' Ἀθηναῖοι ἐρήμῃ δίκῃ θάνατον κατέγνωσαν αὐτοῦ τε καὶ τῶν μετ' ἐκείνου, seem to imply that the sentence was passed in a court of justice. See Schömann, De Comitiis, 220.

should suffer the penalties of treason. Under this decree they were tried, the real charge against them being the part which they had taken in establishing the oligarchy. Antiphon made in his defence the best speech which had ever been heard up to that time; so says Thucydides: (VIII. 68.) They were sentenced to death. Onomacles escaped. The other two suffered, as already mentioned: (ante, p. 340.)[1]

The impeachments of Philocrates by Hyperides and of Leocrates by Lycurgus are familiar to my readers. (See Vol. II. pp. 118, 152, 320, 394.) These and some other examples which have been collected by the industry of Schömann were clearly proper cases for a state-trial. Those which I am about to mention can hardly be so considered.

One is related in the speech of Demosthenes against Euergus and Mnesibulus: (1149, &c.) The plaintiff, for whom the oration was composed, states that he, being a trierarch and superintendent of a navy-board, went by order of the Council to demand of Theophemus, a late trierarch, some ship's furniture which he had to return to the state. Theophemus refusing to deliver up the furniture, he distrained some of his goods, in doing which he was violently assaulted and beaten by Theophemus. Upon this he complained to the Council, who conceiving that the public service was injured by such conduct, and that the laws as well as the plaintiff had been grossly outraged, ordered him to prefer an impeachment against the offender. He did prefer one; the articles of charge were, the refusal to deliver up the furniture, the rescue of the distress, and the assaulting the plaintiff in the execution of his duty. Theophemus was commanded to attend the Council, who, after hearing both sides, gave their votes by ballot and found him guilty. They were then about to consider, whether they should fine him to the extent of five hundred drachms, or send him to be tried by a jury; but upon the earnest intercession of his friends, upon his handing in an inventory of the furniture, and undertaking to refer the private damage to arbitration, the plaintiff consented that he should be fined only in the moderate sum of twenty-five drachms.

Here the importance of protecting a public officer in the execution of his duty, and the necessity of preventing delays in the naval service, might induce the Council to look seriously upon the offence of Theophemus: yet the issue of the affair—and we have only the plaintiff's statement of it—rather tends to show that he exaggerated it, and that the Council did not think at last that it was a very grave one An impeachment undoubtedly was not necessary: but perhaps the Council, having executive duties connected with the navy, and being anxious to provide for its expeditious equipment, strained a point to accomplish that object.

(1) Schömann, De Comitiis, 191.

There is an extant oration of Lysias on behalf of a poor pensioner of the commonwealth, who, if we can rely upon the title prefixed to the oration,[1] was impeached for having continued to receive his allowance when he was able to maintain himself. The speech is addressed to the Council.

Another of Lysias is against some corn-dealers,[2] charged with the offence of *engrossing*, i. e buying up, to sell again, a larger quantity of corn than was permitted by law. We learn from the speech itself, that they were first accused before the Council, and afterwards sent to a jury: from which we may reasonably conjecture that it was a case of impeachment.

We learn also that usurpation of civic rights, pettifoggery, and cowardice in battle, were impeachable offences.[3] From all which examples it appears that most crimes could be prosecuted by impeachment, notwithstanding that there were other methods given by the law, if they were only of sufficiently serious magnitude, either in themselves or from the position or character of the guilty party. It depended on the temper of the People or the Council, whether they would allow it or not. There was a law or practice which in some measure defined the course of proceeding upon impeachments: yet this might be departed from or varied at the option of the People, and sometimes even of the Council, if they deemed it necessary. It was not uncommon for one or the other to direct what punishment should follow upon a verdict of conviction.[4]

There was one peculiar sort of impeachment, which might be brought against those who maltreated parents, orphans, or heiresses; and such was the favour with which the law regarded those parties, that the accuser who took up their cause (whoever he was, for he might be any Athenian) neither paid any fee, nor incurred any penalty if he lost the verdict. On the other hand, a conviction of the accused might be attended with capital sentence;[5] so that we presume, this course was not resorted to except in cases of flagrant oppression. This kind of impeachment however was preferred, not to the Council, but to the Archon, who had cognizance of indictments for the same offence. The difference therefore seems to have lain rather in the advantage given to the prosecutor and the consequences of the verdict, than in the course of the proceedings; and, as far as we can perceive, there was a want of congruity in assigning this title to the accusation so preferred.[6]

(1) It is entitled *ὑπὲρ τοῦ ἀδυνάτου, πρὸς τὴν εἰσαγγελίαν περὶ τοῦ μὴ διδόσθαι τῷ ἀδυνάτῳ ἀργύριον.*

(2) Oratio *κατὰ τῶν σιτοπωλῶν.*

(3) Dionysius, De Dinarcho, c. 10. Lysias, cont. Theomn. init. Isocrates, De Antid. 337, ed. Bekker.

(4) Schömann, De Comitiis, 188, 198, 209.

(5) Isæus, De Pyrrh. hered. 42, speaking of these charges of *κάκωσις*, says:—*τοῖς ἁλισκομένοις ἔσχαται τιμωρίαι ἐπὶ ταῖς εἰσαγγελίαις ἔπεισιν.*

(6) See Schömann, De Comit. 212. Ant. Jur. Publ. 273. Meier and Schömann, Att. Proc. 269.

The last remark is applicable also to certain charges against the official Arbitrators, which are said to have borne the name of Impeachment: of which more will be said in Appendix X.

PLAINT TO THE ASSEMBLY.

Of this proceeding, which the Athenians called *Probole*, and for which it is impossible to find any corresponding term in the English law, the reader has got some knowledge from the Oration against Midias. It was an application to the People in assembly for leave to prefer a criminal charge, and was reserved for certain cases in which, either from their importance to the community, or on account of the rank and station of the offenders, it was desirable to obtain the popular sanction to the prosecution. It may seem strange that there should be another way of effecting an object, the attainment of which was amply provided for by the method of impeachment: and this is an example among others, illustrating the disposition of the Athenians to multiply legal forms. Nevertheless, between the Plaint to the Assembly and the Impeachment preferred to the same body there was not a mere nominal distinction. For upon an Impeachment the people might themselves pronounce final judgment, without sending it to another tribunal; or they might order a particular mode of trial or punishment: whereas upon a Plaint, if they decided against the accused party, they directed only that he should be tried in the usual way; which was by a jury before the Thesmothetæ. The chief advantage of this course was one which attended an impeachment—viz., that it created a prejudice against the accused: for, though the decision of the Assembly was not in point of law binding upon the jury, it could hardly fail to exercise an influence over their minds. The trial also was attended with no risk to the prosecutor.[1]

The principal cases in which it appears that this process could be resorted to were—charges against magistrates for official misconduct or oppression—charges against persons who profaned any of the solemn festivals by indecent outrage or disturbance—charges against pettifogging orators and informers. Some others are noticed by the grammarians; viz., charges of disaffection to the state, and clandestine working of the public mines: and Demosthenes in the Oration against Midias mentions a case of embezzlement which was brought by Plaint before the Assembly: (ante, p. 135.)

The second of the abovementioned cases is the one which is most familiar to us, owing to the Oration against Midias, from which we derive considerable information as to the practice. I shall content myself with referring to those passages which relate to it: (ante, pp. 66, 67, 124, 125.)

As regards the charge of pettifoggery, it is probable, as Schömann suggests, that recourse would be had to the Plaint in those instances,

(1) See what I have said under title Προβολή in the Archæological Dictionary; and Schömann, De Comitiis, 227, &c.

where men had to deal with artful and influential orators, who threatened to be dangerous opponents, unless the popular voice could be enlisted in aid of the prosecution.[1] An example of the kind is reported, which is singular in one respect, that the proposal to accuse emanated from the people themselves. It occurred soon after the execution of the generals who won the battle of Arginusæ. The Athenians, repenting of the wrong which had been done them, passed a vote in assembly, that those who had misled the people should have Plaints preferred against them, and should give bail for their appearance. In pursuance of this vote Callixenus (who was expressly named) and four others were accused, and kept in custody by their sureties; but they contrived to escape. Amid the calamities which ensued the matter was suffered to drop; and of the rest we learn nothing further; but Callixenus, venturing to return to Athens after the expulsion of the Thirty Tyrants, was held in such universal detestation, that he was left to die of hunger.[2]

In connexion with the processes above enumerated grammarians mention *Apographe* and *Docimasia*, which however stand on a somewhat different footing from the others. *Apographe* was giving information of property belonging to the state, or liable to be seized by the state, of which I have already spoken in the present Appendix: (ante, p. 341.) This, strictly speaking, was not the institution of a criminal proceeding: for, if the holder of the property admitted the information to be correct, possession was taken by the public officers, and there was an end of the matter. If the public right was disputed, litigation ensued between the holder or claimant of the property on the one hand, and the informer acting in the state's behalf on the other; and then the term *Apographe*, which properly signified only the schedule or specification of the property liable to be seized, was applied in a more extended sense to the quasi-criminal cause which arose out of it.[3]

Docimasia was the probation of magistrates and other functionaries before they were admitted to their official duties. Any citizen might object that the party on his probation was for some reason or other unfit to hold office. The grounds of objection, if persisted in, were examined either by the Council or by the Court of Justice; and, if they were satisfactorily proved, the accused party was rejected. The probation itself was in most cases a mere matter of form, necessary to

(1) Schömann, De Comitiis, 233. Isocrates in a passage before cited, (De Antid. 337. ed. Bekker,) mentions these three ways of prosecuting *Sycophantæ*,—κατὰ τούτων γραφὰς μεν πρὸς τοὺς Θεσμοθέτας, εἰσαγγελίας δ' εἰς τὴν βουλὴν, προβολὰς δ' ἐν τῷ δήμῳ. To which Pollux adds that they could be proceeded against by φάσις. So odious was this crime in the eye of the law, and yet so common.

(2) Xenophon, Hellen. i. c. 7, s. 35. As to the proceedings against the Generals, and the perplexing question to which they have given rise, the reader should consult Grote's History of Greece, viii. 238, &c.

(3) 'Απογραφὴ signified the delivering of a schedule, or the schedule itself. whatever its contents were. Therefore it was applied to a list of persons denounced or informed against as criminals. See Meier and Schömann, Att. Proc 254.

be gone through by all persons elected to offices, but not involving any criminal inquiry, unless accusers came forward with the object of effecting their exclusion.[1] The like opportunity was afforded at the first regular assembly of each Presidency, when the people were asked whether they were satisfied with the conduct of their present magistrates;[2] upon which complaints of misconduct might be preferred by any citizen, and these, if it became necessary, were brought to trial by the Archons.[3]

There was however an extraordinary kind of probation, not of magistrates, but of orators, which might be called for at any time by an accuser undertaking to prove that for one or more of certain crimes they ought to be disfranchised. It has already been mentioned that, if any person who had been actually disfranchised was seen to speak in the assembly or courts of justice, he might be proceeded against by information and attachment. But there was a certain class of crimes, for which the penalty upon conviction was disfranchisement—such were the striking of a parent, cowardice in battle, unnatural practices, and some others—the mere commission of which (before conviction) justified a proceeding of the following kind. If the guilty party attempted to speak in the assembly or court, it was competent for any citizen to give notice that he should call for a scrutiny into his life and character,[4] and was prepared to prove that he had committed one or more of those particular crimes. Upon such notice having been formally given, the Thesmothetæ took the necessary steps for bringing the case before a jury, which was then tried precisely in the same way as if it had been brought forward by indictment. Upon the conviction of the accused his disqualification was established.[5] It was thus that Æschines obtained the disfranchisement of Timarchus, when he was preparing in conjunction with Demothenes to prosecute him. (See the Argument to the Oration on the Embassy.)

The preparation for trial and the trial itself were conducted pretty much in the same way in criminal as in civil causes; and the explanation of them will therefore be deferred to the next Appendix. Here however it will be convenient to speak—

III. Of the sentence.

The penalty of crime was sometimes fixed by the law, but more often left to be determined by the court.[6] Thus, murder was by the law punishable with death; malicious wounding with banishment and

(1) See Meier and Schömann, Att. Proc. 200, &c. Schömann, Ant. Jur. Publ. 215, 237.

(2) This was called ἐπιχειροτονία τῶν ἀρχῶν.

(3) See Schömann, De Comitiis, 231.

(4) This was called ἐπαγγέλλειν δοκιμασίαν.

(5) See Meier and Schömann, Att. Proc. 209, &c.

(6) A trial, whether of a criminal or of a civil cause, where the penalty or damage had to be determined by the court, was called ἀγὼν τιμητός. One, where it was fixed by statute or otherwise, and had not to be determined by the court, was called ἀγὼν ἀτίμητος.

confiscation; cowardice and desertion with disfranchisement. A usurper of civic privileges was condemned to be sold for a slave. For the fraudulent entry of a debt in the public register, the culprit was made debtor in lieu of the aggrieved party. In these and the like cases, when the defendant was found guilty, the jury had nothing further to do: the penalty of the law followed their verdict. Upon impeachments also, where the council or the assembly had declared what punishment should attend conviction, the jury had no power to impose any other. In the great majority of cases however —as in prosecutions for theft, bribery, outrage, impiety, adultery, maltreatment of parents and orphans, moving illegal decrees, embezzlement of public money, &c. &c.—the penalty was not fixed or declared beforehand; and the jury who found the defendant guilty, had to pass sentence upon him by a second verdict.[1]

But how was this to be done? No such plan was adopted as in our own country, where, when the law does not declare the sentence (as it does in treason and murder), it confers upon the judge a certain range of discretionary power, naming always the maximum and sometimes also the minimum of punishment which may be inflicted. Here, as in other instances, we find how much was left to the discretion of the prosecutor at Athens. It was his duty to name a penalty in the indictment or other instrument of accusation which he preferred to the magistrate. Upon the conviction of his opponent, he was called upon to address the jury in support of the proposed penalty, unless he chose to name a more lenient one, which it was competent for him to do with leave of the court. To this he might be led either by a merciful feeling on his own part, or by the solicitation of the defendant or his friends; or he might be guided by an expression of feeling on the part of the jury; who frequently during the trial of a cause gave token of their favour or disfavour by gestures, murmurs, and clamour. The prosecutor, having made the proposal which he elected to abide by, addressed the jury with such arguments in support of it as he deemed necessary. The defendant was then allowed to speak in mitigation of punishment; but he was required to make some counter-proposition, and to name the penalty which he was content to suffer.[2] Friends often spoke in his behalf, extenuating his offence, or appealing to the mercy of the court; and it was a common thing for a man, who thought himself in great peril, to produce his wife and children at the bar, in order to excite compassion.[3]

(1) See Meier and Schömann, Att. Proc. 189, &c.

(2) The prosecutor was said τιμᾶσθαι, the defendant ἀντιτιμᾶσθαι, or ἑαυτῷ τιμᾶσθαι, the jury τιμᾷν.

(3) Which Aristophanes parodies in the Wasps (v. 975) upon the trial of the dog:

ποῦ τὰ παιδία;
ἀναβαίνετ', ὦ πόνηρα, καὶ κνυζούμενα
αἰτεῖτε . βολεῖτε καὶ δακρύετε.

Compare v. 568.

Between the two proposals of the contending parties the jury had to decide, and to choose one of them. As to this point there has been a difference of opinion among writers on Attic law. It does at first seem strange, that the jury had no power to adopt a middle course, and to pass what sentence they thought reasonable, irrespective of what the parties offered to their choice. A little reflexion however will convince us, that it could not well be otherwise with a jury so constituted as the Athenian. We know that an English jury of only twelve men, who can put their heads together and confer, find it difficult often to decide upon the question of damages. One man proposes this sum, and one that; and after a long discussion the dispute is ended by splitting the difference in some way or other. But how could this be done at Athens with a panel of two or three hundred jurors, and sometimes five hundred or a thousand? A discussion among so many, whether the penalty should be death or banishment or a fine of ten or twenty talents or more or less, would have led to inextricable confusion. It could not have taken place except aloud and openly, and would almost have required a regular debate, which must have occupied a considerable time. We have no mention of any such thing in the Attic writers; indeed we have no evidence that the jury ever conferred at all. With respect to their first verdict, there could be no use in a conference, when it was decided by a majority of votes. But the second verdict was given in like manner. The ballot excludes the notion of their coming to an agreement, and is hardly compatible with the supposition that each juror might propose a sentence, but is quite consistent with their deciding between the proposals of the two adversaries.

That some inconvenience as well as injustice was occasioned by this plan is not to be doubted. Yet we must not suppose it was a common practice to present widely different estimates to the jury, so as to leave them no alternative between the extreme of severity and the extreme of lenity. The difficulty was usually avoided by the prudence or moderation of the parties, or by an arrangement between them or their friends. The prosecutor might always apprehend that, if he laid the penalty too high, the jury would take compassion on his opponent; while the defendant might fear to irritate them by putting it too low. The trial afforded to both an opportunity of feeling the pulse of the jury. If they appeared to be greatly incensed against the defendant, the prosecutor might safely ask for a severe punishment: if they were not so, it was prudent to relax in his demand. Similar views would prevent the defendant from asking for too light a penalty, or would induce him to effect a compromise. The friends were allowed to consult. Entreaties passed from one to the other in the hearing of the jurors, who (except in heinous cases where public justice demanded severity) were favourable to such arrangements, and gave the parties time to adjust them. Thus the very dilemma in which the adversaries were placed would often incline them to be

reasonable. That on some occasions they should be obstinate and refuse to accommodate each other, was also from the nature of things to be expected.[1]

A few examples will illustrate the course of proceeding.

It is mentioned in the Oration against Midias (ante, p. 124) that, when Evander had been convicted of profaning the Mysteries, the jury showed an inclination to pass a capital sentence upon him, but, Menippus the prosecutor having accepted terms of compromise, they were satisfied with fining him.

Arethusius was convicted by Apollodorus of having sworn falsely to a summons. The penalty of death was proposed by the prosecutor; a fine of a talent by the defendant. The jury were about to divide, and (says the speaker) "they would have passed sentence of death, but I entreated the jury, rather than they should do anything of the sort through me, to accept the penalty offered by my opponent." (Demosthenes, cont. Nicostratum, 1252, 1254.)

The same Apollodorus was indicted by Stephanus for having proposed that decree, which would have enabled the Athenians to apply the surplus of their revenue to the carrying on of a necessary war, instead of lavishing it on public amusements. The penalty was laid at fifteen talents. Stephanus was requested to lower it, but in vain: he insisted on going to the jury for the full amount. The jury divided, and imposed a fine of one talent. Theomnestus, son-in-law of Apollodorus, relates this on the trial of Neæra, and bitterly complains of the peril which Apollodorus had been made to incur. The peril consisted in this; that the jury had no other choice, than between the fifteen talents of Stephanus and the single talent offered by Apollodorus. (See the Oration against Neæra, 1347.)

The like complaint is made in the Oration against Theocrines: (ad finem.) Theocrines had procured the conviction of the speaker's father, and proposed a fine of ten talents. He withstood all entreaties to make a reduction, and the defendant was sentenced to pay the ten talents. The son afterwards prosecutes Theocrines to revenge his father, and assigns this cruelty as his principal motive.

The story of Socrates, as told in Plato's Apologia, affords another illustration. He having been tried on a charge of impiety, and convicted by a majority of three votes, Melitus, his accuser, proposed that he should be punished with death. Socrates, when it came to his turn to say what punishment he deserved, first declares that he ought to be entertained in the public dining-hall as a reward for his services; then, (to comply with the form of law,) he offers one mina, saying, that was all he could afford to pay; but shortly after (at the earnest request of friends) he names thirty minas, for which they offer to be bail. The jury look upon this behaviour as an insult to

(1) This subject is fully treated of in my article Τίμημα in the Archæological Dictionary.

the court, and pass sentence of death upon him. Some of them, who had voted for his acquittal, voted for the capital punishment.

The general rule was, that only one penalty could be imposed by the court, as we learn from the Oration against Leptines: (ante, p. 52.) In certain cases however the jury were empowered by statute to inflict an extra penalty; as for instance, imprisonment besides a fine; which any individual juror was at liberty to propose.[1] Here there would be no difficulty. The law specified how the party might be punished; and the jury divided upon the single question, whether the extra punishment should be inflicted or not.

The verdict of condemnation, whatever it was, having been declared by the presiding magistrate, was duly entered on record. The next thing for us to consider is—

IV. The execution of the sentence.

The manner in which this was enforced depended on the nature of the case.[2]

If the sentence were death or imprisonment, the presiding magistrate gave notice thereof to the Eleven, who took the necessary steps to see it inflicted.

If a man was condemned to slavery, he was handed over to the Poletæ, or Commissioners of public sales, who forthwith sold him for a slave to the highest bidder.

Banishment was left to be executed by the party himself, who was bound to quit the country within the prescribed period. If he failed to do so, or if he returned without permission, he was punishable with death; and any one who harboured him was liable to the same fate.

A disfranchised person had to abstain from exercising the privileges which he had forfeited. If he attempted to do otherwise, he might be proceeded against immediately by information and attachment.

Upon sentence of confiscation, whether combined with other punishment or not, it became the duty of the Demarch (or chief officer of the defendant's township), sometimes of the Eleven, and sometimes of special Inquisitors, to discover what goods and effects he had, that were liable to be seized by the state, and to furnish an inventory of them to the Poletæ. Any private individual might give the like information, as we have seen (ante, p. 341), and the prosecutor was usually on the alert to enforce the law. Inventories thus taken of confiscated property were read in the first regular assembly of each Presidency, that all parties who had any claim might have due notice.

When a fine was imposed, the magistrate who tried the cause gave notice of it to the Practores or Collectors, whose business it was to enter it forthwith in the public register, and to demand payment.

(1) The juror making the proposal was said προστιμᾶσθαι, the whole jury voting for the extra penalty, προστιμᾷν.

(2) Upon the whole of this subject, see Meier and Schömann, Att. Proc. 739, &c.

When the fine or any part of it went to a temple, notice was sent also to the Treasurers of the God or Goddess to whom the temple belonged. The money, when paid to the Collectors, was handed over by them to the Apodectæ or Receivers, or to the Treasurers of the temple, as the case might be; and the name of the debtor was then erased from the register. If the fine was unpaid after the expiration of the ninth Presidency, or, in case it were imposed for a personal outrage, for eleven days after the entry in the register, it was doubled, and an entry made accordingly. During the whole time that it remained unpaid, the debtor was excluded from the enjoyment of his civic rights, and was liable also to imprisonment. If he died without satisfying it, the disfranchisement extended to his children.[1]

As to applications for a new trial and relief against unjust verdicts, I must refer to the Appendix following.

APPENDIX IX.

CIVIL PROCEDURE.

What has been said concerning the presidency of different magistrates in judicial proceedings at Athens, applies to civil causes as well as to criminal. Almost all important civil jurisdiction belonged to the Archons. We have seen how the chief Archon had cognizance of inheritance causes, and disputes concerning family rights between citizen and citizen: (ante, p. 256,)—the King-archon, of disputes concerning priesthoods and sacerdotal privileges: (p. 258,)—the Polemarch, of those which concerned the personal or family rights of aliens: (p. 259,)—while the Thesmothetæ, or Judges strictly so called, had the most extensive jurisdiction, embracing all that was not specially assigned to others: (p. 260.) Before the Generals came disputes connected with the property-tax and the trierarchy. (Meier and Schömann, Att. Proc. 550.) The forty itinerant judges tried certain cases of assault and trespass to goods. Of them and of the arbitrators I shall speak elsewhere.

I am now about to explain the proceedings in a civil action.

The general idea of an action is a suit at law, in which there is a plaintiff and a defendant. Such, in a narrow sense of the term, is the meaning of δίκη. But there were divers causes at Athens, in which (strictly speaking) there was neither plaintiff nor defendant, but all the parties were similarly situated with respect to the subject of contest: for example, when adverse claims were made to an inheritance or an heiress; or when families or individuals went to law about a priesthood or its appendant privileges; or upon disputes

(1) See article Πράκτορες in the Archæological Dictionary; Böckh's Public Economy of Athens, Transl. ii. 119 &c.

concerning the trierarchy or any other of the official services, where each of the parties sought relief from the burden on the plea that his adversary was better able than himself to discharge it: a cause of this kind was termed in law διαδικασία, which I have translated *Interpleader.*[1]

Actions again were of two kinds, δίκαι κατά τινος, and δίκαι πρός τινα. The former were actions for breaches of obligations *ex delicto;* as actions for assault and battery, trespass, evil-speaking, theft, breach of trust. The latter included actions for breaches of obligation *ex contractu,* and actions to recover specific property; as an action of debt, or upon a contract to pay a certain sum of money; or an action to recover a house, or a slave, or any goods and chattels taken or detained from the owner. This distinction, which is purely one of terms, has some degree of uncertainty about it; nor does it exactly correspond with any which we have in our own law; yet it is worthy to be noticed, as one of the niceties of Athenian forensic practice.[2]

That no one could be the plaintiff in a civil action except the party whose rights were to be recovered or wrongs redressed, is obvious of itself. A woman however could only regularly commence an action through her legal protector, (κύριος,) either her husband or nearest relative; a minor through his guardian; a resident alien through his patron. (Att. Proc. Book IV. Chap. 1.)

The ordinary course of a lawsuit was as follows:—

The plaintiff summoned the defendant to appear before the magistrate. On the day of appearance he preferred his plaint in writing. The magistrate inquired into the nature of the case, examined the parties, and, if he thought the action properly brought, required the defendant to plead. The court fees were paid. A day was usually appointed for a further examination and for the production of evidence. The depositions of witnesses were then taken. These and all other evidentiary documents were kept safe by the magistrate until the day of trial. For that day a jury was summoned; the magistrate and the parties attended; plaintiff and defendant addressed the jury in turn, and their evidence was read by the clerk or usher of the court, each witness being present to support his testimony. At the close of the case the jury were called upon to find their verdict, which they did by ballot, either for the plaintiff or the defendant. If damages had to be assessed, they divided again for that purpose. Their verdict upon both questions was declared and recorded by the magistrate, who presided in court during the whole time.

Such is an outline of an Athenian lawsuit, when it proceeded regularly, without any default or dilatory measures on either side. We must now examine it more in detail.

(1) See Meier and Schömann, Att. Proc. 367, 465, 471.

(2) Isæus says, εἰ δὲ μήτε πρὸς ἐμὲ μήτε κατ' ἐμοῦ δίκην εἶναί φησι τῷ παιδί. Cited by Meier, Att. Proc. 167. See Schömann, Ant. Jur. Publ. 274; and what I have said under article Συμβόλαιον in the Archæological Dictionary.

The summons in an action was effected in the same way as upon an indictment, by verbally desiring the defendant to attend before the magistrate on a particular day, commonly about the fifth day from the summons. The plaintiff seems to have been restricted in his choice of a day, inasmuch as certain days were appointed by law for appearance,—as the last of the month in actions of debt:[1] and no feast-days could be selected for such a purpose, not to mention those which were devoted to other important business. (Att. Proc. 577—580.)

Of the witnesses to the summons I have already spoken: (ante, p. 357.) Arrest was not allowed in civil actions, except in the case of aliens, who might be held to bail. (Att. Proc. 580.)

The defendant could not appear by attorney, nor was appearance a mere form (as with us) by entry in a court book. He was obliged to attend in person before the magistrate, to answer the complaint preferred against him. If he did not attend, and the plaintiff could prove that he had been duly summoned, he was liable to suffer judgment by default.[2]

On the day of appearance the plaintiff exhibited his bill of plaint[3] to the magistrate, and was questioned by him concerning it. The magistrate had then several things to consider; viz. whether he himself had jurisdiction in the cause; whether the plaintiff was a competent person to bring an action; whether the action was brought at a proper time and in a proper form; and lastly, whether in point of law there was any right of action at all.

For example, if a man had brought an action of debt before the Archon, the Archon would say to him—"You have come to the wrong person; I cannot entertain this case; you must summon the party before the Thesmothetæ."

Or if a woman or a minor had taken proceedings without the aid of a guardian or *prochein amy*, the magistrate would not suffer the case to go on, until the form of the law were complied with in that respect.

An action might be commenced at a wrong period. Thus, mercantile

(1) See Aristophanes, Nubes, 1189.—

ἐκεῖνος οὖν τὴν κλῆσιν εἰς δυ' ἡμέρας
ἔθηκεν, εἴς γε τὴν ἕνην τε καὶ νέαν,
ἵν' αἱ θέσεις γίγνοιντο τῇ νουμηνίᾳ.

Ibid. v. 1221.—

καλοῦμαι Στρεψιάδην.

STREPS.

τίς οὑτοσί;

PAS.

ἐς τὴν ἕνην τε καὶ νέαν.

Aves, 1046.—

καλοῦμαι Πεισθέταιρον ὕβρεως ἐς τὸν Μουνυχιῶνα μῆνα.

(2) ἐρήμην ὀφλεῖν. The plaintiff was said ἐρήμην ἑλεῖν, sc. δίκην.

(3) Called λῆξις or ἔγκλημα. See Att. Proc. 595. We may translate it the *bill* or the *declaration*, or the *plaint*.

suits were confined by law to the six winter months, and the magistrate had no power to entertain one in any other month. (Att. Proc. 579.)

The plaint was required also to be in the legal and proper form: if not, it was the magistrate's duty to direct an amendment, (Ibid. 601.) In these and in all matters of a technical and formal nature the magistrate exercised an undisputed authority, and was (both in theory and practice) the sole judge.

Upon the last question also—whether the plaintiff had any right of action—there is no doubt that in the theory of the law the magistrate had full power to decide in the first instance, and at once to quash all further proceedings, if it appeared by the plaintiff's own statement of his case that there was no legal ground of complaint. He was subject however to a check, which in practice greatly controlled his authority. He might at any time be accused of corruption or misconduct, especially at the end of his official year, when he had to render an account of his administration. Any persons might then come forward, and allege, that by reason of his neglect they had been prevented from obtaining justice. When the democracy became confirmed, and the people fond of exercising their judicial powers, they looked with jealousy upon any person who restrained them; and the complaint of a disappointed suitor would be readily attended to. It might be urged also with some show of reason that, as juries were constituted judges of the law as well as the fact, any decision by a magistrate upon matters of substance in the cause was premature. Thus it became a delicate thing for him to interpose between the suitor and his rights; and, with respect to essential points, his duty was rather ministerial than judicial.

There might indeed be cases in which the law was so clear against the plaintiff, that it would not be safe for the magistrate to proceed. He would then be imperatively bound to follow his own judgment, and quash the suit.[1]

If he saw no objection to the progress of the cause, he intimated the same to the parties, and appointed a day for a hearing. Then was the action considered to have formally commenced, this being the first step taken by the court. The allowance of the action by the magistrate was like our issuing the writ of summons, which commands the defendant to appear.[2]

A short abstract of the plaint was then written upon a board in

(1) A case is mentioned in the Oration against Lacritus (p. 941), which the magistrate was expressly forbidden to bring for trial:—

καὶ δίκη αὐτῷ μὴ ἔστω περὶ τοῦ ἀργυρίου, ὃ ἂν ἐκδῷ ἄλλοσέ ποι ἢ Ἀθήναζε· μηδὲ ἀρχὴ εἰσαγέτω περὶ τούτων μηδεμία.

(2) The plaintiff was said *λαγχάνειν δίκην*, which came thus to signify in common Attic parlance, *to commence an action.* Strictly it is, *to get the suit entertained, to obtain a judicial hearing;* and still more strictly, *to obtain it by lot*, which arose probably from this, that, when there were several causes, the magistrate cast lots for the order in which they were to be taken. The expression would remain when the practice was given up. *Λαγχάνειν* has indeed shared the fate of many other words, in losing a portion of its original meaning, and is applied to a variety of objects in the simple sense of *to obtain.* See Meier and Schömann, Att. Proc. 596, &c.

chalk, and hung up in the magistrate's office, or in some conspicuous place outside, to inform all persons interested, that a cause between such and such parties was pending. A copy of it was also kept in the record office in the temple of Cybele. (See Att. Proc. 605, 606.)

The plaint was brief and simple, if we may judge from the few forms that have been preserved to us; though perhaps hardly one of them is perfect. Demosthenes gives us the form in the action for false testimony brought by Apollodorus against Stephanus: (p. 1115.)

"Apollodorus son of Pasion of Acharnæ against Stephanus son of Menecles of Acharnæ. Damages one talent. Stephanus gave false testimony against me, to wit, that which is written in the deposition."

The deposition itself was most probably annexed.

In the suit against Aphobus it began thus: (853.)

"Demosthenes makes this complaint against Aphobus. Aphobus is indebted to me for monies had and received by him as guardian, (that is to say,) eighty minas which he received as the marriage portion of my mother pursuant to the will of my father."

This was the first item of his demand, which amounted altogether to ten talents. Demosthenes takes credit to himself for not having laid the damages in one general sum, but given full particulars of his claim; from which we may perhaps infer, that it was not the common practice so to do.

The form of a plaint preferred by Dinarchus against Proxenus for the loss of money and goods, which he charged the defendant with having secreted or taken away from him, is preserved by Dionysius: (De Dinarcho Judicium, 635.)

"Dinarchus son of Sostratus of Corinth against Proxenus, with whom I dwell, for damage, two talents. Proxenus hath injured me, for that, having received into his house in the country, when I returned from Chalcis after my exile from Athens, two hundred and eighty-five staters of gold, which I brought from Chalcis with the knowledge of Proxenus, and took with me into his house, together with silver plate of the value of not less than twenty minas, he laid a scheme to deprive me of them."

At this stage of the proceedings the magistrate demanded payment of the court fees (*πρυτανεῖα*), which were computed on a certain scale according to the amount of damages claimed. If the damages were from a hundred to a thousand drachms, the fees were three drachms for each party; if from a thousand to ten thousand, thirty drachms; and so on. There were no fees however in actions for assault and battery; the object of which might be, to encourage parties to seek legal redress rather than take the law into their own hands: and none in any causes under a hundred drachms.

The plaintiff was required to pay his share of the fees before the cause could be set down for hearing; the defendant most likely before his plea could be received. All fees were paid by the magistrate to the public treasury, and helped to defray the expenses of

the court and jury. The successful party was reimbursed by the loser.

From the ordinary court fees we must distinguish the deposit (*παρακαταβολή*), which was required in some cases as security against a frivolous demand. Two instances are particularly mentioned: first, where a man claimed property which had been confiscated by the state, and deposited a fifth of its value; secondly, where a man claimed an inheritance which had been already adjudged to another, and deposited a tenth of the value, to be paid to his opponent if successful.

(See Att. Proc. Book IV. Chap. 4.)

On the appointed day the parties again attended before the magistrate, whose duty it now was to receive the defendant's plea, and to hear the case fully on both sides, in order to prepare it for trial.[1]

In most systems of forensic practice some method has been devised for bringing the disputes of the parties to an intelligible issue, so that, before they go into court, it may appear on the face of the proceedings what are the questions to be tried. This in English law is called *the pleading*, in a restricted sense of that term, and is exceedingly complex and artificial, notwithstanding many attempts which have been made to simplify and improve it. Between our practice and the Athenian one point of difference is this—that with us the pleading is for the most part carried on privately in the chambers of the lawyers, resort being had to the court or to a judge only occasionally, when some *dignus vindice nodus* is to be solved: whereas the Athenian pleading (which, as we might expect, was a much simpler affair) was conducted entirely under the superintendence of the magistrate.

Both parties were first sworn to the truth of their respective statements.[2] The defendant, being called upon for his defence, either simply denied the plaintiff's charge, or pleaded specially. The plea, like the plaint, was always in writing.

A simple traverse of the charges in the plaint, a plea of the general issue, as we should say, was called *ἀντιγραφή*.[3] We have the form of one in the action above referred to, (ante, p. 376,) of Apollodorus against Stephanus, for false testimony:

(1) This hearing was called *ἀνάκρισις*, because the magistrate questioned and examined the parties. He was said *ἀνακρίνειν δίκην*, the parties *ἀνακρίνεσθαι*, the cause itself *ἀνακριθῆναι*.

(2) These oaths were called *ἀντωμοσία* and *διωμοσία*. The former originally signified only the defendant's oath; then it was used as synonymous with the plea or answer (*ἀντιγραφὴ*) in support of which it was sworn: afterwards it was applied also to the plaintiff's oath and his pleading. *Διωμοσία* was used of the plaintiff's or the defendant's oath, or of both together. See Meier and Schömann, Att. Proc. 624, 628.

(3) The claim put in by each of the parties to an inheritance cause, in which no one was strictly plaintiff or defendant, was likewise called *ἀντιγραφή*. Att. Proc. 629. And the same name was given to a cross action. Ibid. Book IV. c. 7.

Our own term *plea* neither in popular nor legal phraseology is confined entirely to defensive allegations.

"Stephanus son of Menecles of Acharnæ says that his testimony, to wit that which is written in the deposition, was true."

A special plea was called παραγραφή. This, instead of meeting the plaintiff's charge by a denial, set up an objection, either of law or fact, to the maintenance of the action. With us the term *special plea* is applied only, where the defendant alleges matter of fact as an answer to the action: an objection of law, arising upon the plaintiff's own statement of his case, is called a *demurrer*. No such distinction prevailed at Athens. The term παραγραφή was applied to every objection raised by pleading, whether it was patent on the face of the proceedings or not. We have several examples of these pleas in the orations of Demosthenes.

To an action brought by Nausimachus and Xenopithes against clients of Demosthenes the plea is, that a release of the cause of action had formerly been given to their father.

Phormio, sued by Apollodorus for a bank deposit, pleads a release, and also the statute of limitations, that is, that the cause of action had accrued more than five years ago, which was a bar to all actions for the recovery of debts.

Nicobulus, sued by Pantænetus, pleads 1. a release; 2. that several causes of action, belonging to different jurisdictions, had been joined in one plaint; 3. that the plaintiff had brought a mining action, which the circumstances did not justify.

A plea similar to the last is pleaded by Demon at the suit of Zenothemis, viz. that he had brought a mercantile action improperly, without having any contract which could legally be the subject of such an action. And this, says he, appears by the plaintiff's own declaration.[1]

The mode of trying these objections was peculiar. With us issues of law are determined by the court separately from issues of fact: but all issues of fact are sent together to be decided by the jury, each party having to prove those, the affirmative of which lies upon him. The Athenian *paragraphe*, whether it raised questions of fact or law or both, was always tried by itself, separately from the general issue. It was treated as a distinct case, or a distinct action, in which the defendant assumed the character of plaintiff; he began, and all the burden of proof lay upon him.[2] If he failed to establish his objection, the original action was proceeded with: if he established it, there was an end of the original action, unless it was an objection in point of form only, in which case the action might be recommenced in the proper manner.

To make this clear: let us suppose that accord and satisfaction is pleaded to an action of debt. In England, if there were also a plea

(1) καὶ αὐτὸς ὁμολογεῖ ἐν τῷ ἐγκλήματι. Demosthenes, cont. Zenoth. 882. Compare the Orations against Apaturius and Lacritus.

(2) The plaintiff was said ἀντιλαγχάνειν παραγραφήν, and κατηγορεῖν τοῦ διώκοντος. Demosthenes, cont. Pantænetum, 976; cont. Phormionem, 908.

traversing the debt, both would be tried together: the plaintiff would first have to prove the existence of the debt, and then the defendant would be called upon to prove accord and satisfaction. At Athens there would be a distinct trial of the issue raised by the special plea. If the defendant could show, that the matter had been settled by agreement as he alleged, he defeated the action altogether: if he failed to make this out, another trial was appointed for proof of the plaintiff's case.

It is obvious that the Athenian practice was attended with inconvenience and delay; and we know that special pleas were frequently resorted to for the purpose of harassing the plaintiff and throwing difficulties in his way. Demosthenes, who knew how to employ them for his clients when it suited his purpose, classes them with affidavits to postpone the trial and other dilatory devices: (ante, p. 93.) They were therefore regarded with disfavour by juries; especially pleas to the jurisdiction, and objections of a mere technical character: and hence we find that in the extant speeches in support of such pleadings the defendants, instead of confining themselves to the issues before the court, travel out of the record to show that the general merits are on their side, and that there never was any foundation for the plaintiff's action.[1] This of course was irregular: yet the opening of the whole case might occasionally produce a good effect: it might enable the parties to guess the probable result of a second trial, and so stop further litigation.

The regulation by which special pleas were thus separately tried, and the defendant got the advantage of beginning, was first introduced after the expulsion of the Thirty Tyrants. Its chief object was to enable persons, who might be prosecuted for political offences, to plead with more effect the general amnesty which had been agreed to: but the principle was extended to all special defences, and to private as well as public causes. This is explained in the opening of the speech of Isocrates against Callimachus, which the student should peruse.[2]

There was another course, besides this of special pleading, by which a defendant might impede the progress of an action. He might get a witness to make an affidavit, showing that for some reason or other the action was not maintainable: the affidavit was called *διαμαρτυρία*. The plaintiff then could not proceed with the cause, until he had convicted the witness of perjury: if he declined to proceed against the witness, or if he failed to convict him, the cause was lost. This proceeding was most common upon claims to

(1) See the arguments to the Orations cont. *Zenothemim* and pro Phormione.

(2) Before this time the term *παραγραφὴ* was not used, but every plea was called *ἀντιγραφή*. If a special defence was pleaded, it came on to be tried as part of the cause. We have an example in the speech of Lysias against Pancleon. See p 166. *ἐπειδὴ δέ μοι ἀντεγράψατο μὴ εἰσαγώγιμον εἶναι.* The term *ἐξωμοσία* was also applied to a special plea, because it was confirmed by oath. See Meier and Schömann Att. Proc. 633, 644.

inheritances; and there were certain known grounds, upon which it could legally be founded; as, that the last owner of the estate had left a son and heir, which excluded the title of a collateral relative; or that the estate had already been adjudged by law, and the question could not be litigated again. The affidavit was usually made by a witness: but from examples which we find in Isæus and Demosthenes[1] it appears, that it could be made by the party himself, who then incurred the liability of an ordinary witness to be sued for false testimony. He deposited in the first instance a tenth part of the value of the estate, which, if the affidavit were pronounced to be false, was forfeited to the adversary.

But the right to put in an affidavit of this sort was not given to the defendant only. The plaintiff was at liberty to tender one on his own behalf, alleging that the action was maintainable. And it seems, the plaintiff's right took priority of the defendant's; that is, he had the first choice of putting in such an affidavit. Upon his doing so, the defendant, if he wished to stop the action, was compelled to sue the plaintiff's witness: if he failed to sue the witness or to convict him, the cause was carried to trial. By the conviction of the plaintiff's witness the cause was defeated; and, if on the trial of his witness the plaintiff did not get a fifth of the votes, he had to pay a sixth part of the damages to the defendant.[2]

If the defendant simply denied the plaintiff's charge, without making any special objections, the magistrate had to prepare the cause for trial. In describing the subsequent proceedings I shall suppose this course to have been adopted.[3] I shall suppose also, that the parties chose to have the case tried by a jury, and not by an arbitrator. How and under what conditions the last course was open to them, will be shown in the following Appendix.

The business now was to receive the evidence, and to put it into the proper shape to be produced at the trial. No evidence was admissible in court, that was not in writing.

The proofs would lie partly in the law and partly in the facts of the case. The unwritten or common law needed no proof: the parties appealed to that general knowledge of it which the magistrate and the jury possessed, or were supposed to possess. Statutory law was proved, not, as with us, by producing an authentic copy of the whole statute—(the Athenians had no multiplied copies of their written code, much less any authenticated ones like those in England which are printed by the king's printer)—but by producing such extracts as were material to the issues in the cause. The whole of

(1) Isæus, De Pyrrhi hereditate, de Philoctemonis hereditate. Demosthenes, contra Leocharem. The two last cases were actions against the witness who made the affidavit.

(2) See Meier and Schömann, Att. Proc. 639; and my article *Heres* in the Archæological Dictionary.

(3) This was called *εὐθυδικία*, and the defendant was said *εὐθυδικίᾳ εἰσιέναι*, or *τὴν εὐθεῖαν εἰσιέναι*.

the Athenian code was kept in the temple of Cybele under the custody of a public officer; and every Athenian had access to it. Parts of the law were to be found in other places; for instance, laws which concerned the duties of the Archon were hung up in his office; those which concerned the Council, in the council-chamber; and so on. Whatever extracts were taken by either party to be used in the cause, were brought to the superintending magistrate, whose duty we may presume it was to see that they were genuine. To cite a fictitious law before the jury was an offence punishable with death.[1]

Extracts were in like manner taken from popular decrees, orders of council, state papers, or any other documents that were kept in the public archives and were accessible to all.

The testimonial evidence on either side was reduced to the shape of depositions. This was frequently done by the parties at their own houses: but it was as frequently done upon the examination before the magistrate by the clerk in attendance. The common practice was for the witnesses to attend at the magistrate's office, and to be sworn at the altar; though that was not absolutely necessary. When the witnesses did not attend, their depositions were produced to the magistrate by the parties who intended to use them; but neither these nor any other depositions could be read at the trial, unless the witnesses were present to confirm them. To this the only exception was, where the witness was abroad or unable to attend from illness, in which case his deposition might be certified by the oath of one or more persons appointed to receive it.[2] Women, minors, and disfranchised citizens were not competent witnesses: neither could the parties give direct testimony for themselves; but each might question the other, and have his answer taken down, to be given in evidence against him. Slaves could only be examined under the torture, as will be shown presently. Hearsay evidence was inadmissible, except the declarations of deceased persons; a rule resembling that of our own country.

Many forms of depositions are to be found in the orators. We have had some examples in the speech against Midias: (ante, pp. 96, 101, 122.) The following is one from the speech of Demosthenes against Lacritus: (p. 927.)

"Archenomides son of Archedamas of Anagyrus testifies, that articles of agreement were deposited with him by Androcles of Sphettus, Nausicrates of Carystus, Artemon and Apollodorus both of Phaselus, and that the agreement is still in his hands."

Private documents of all kinds that were intended to be used at the trial, such as wills, agreements, bankers' books, ledgers, &c.

(1) Read my article Νόμος in the Archæological Dictionary; and Meier and Schömann, Att. Proc. 660.

(2) Such deposition was called ἐκμαρτυρία. See what I have said under that title and under Μαρτυρία in the Archæological Dictionary.

were handed in to the magistrate, certified by the depositions of witnesses, which were annexed to them. If any document required as evidence by either party were in the hands of the opponent, he might challenge or give him notice to produce it. In case of refusal, it seems he might take a legal proceeding to compel production;[1] but the more usual course was, to give evidence of his own challenge, in order to raise a presumption or prejudice against the opponent.

Challenges, *προκλήσεις*, which one party gave to another during the progress of a cause, were of various kinds.[2] Thus, one party challenged the other to produce a document and allow him to take a copy of it. Or he challenged the other to inspect a document in his own possession, which he intended to put in evidence; giving him an opportunity to see that it was genuine, in order to prevent him from disputing it afterwards. With the like object he might propose to send out a joint commission of inquiry, to obtain evidence of something which had happened at a distance from home, and which could not well be ascertained without going to the spot.[3] Or he proposed to refer some particular question to a person who was capable of deciding it, or even to stake the whole cause upon such person's testimony. The most common of all challenges were proposals for giving up slaves to be examined by torture.[4]

We have seen that slaves were incompetent to give testimony, except under that cruel application which not only the ancient Greeks and Romans, but even Christians for many ages persisted in regarding as a test of the truth. The Athenian orators went so far as to assert, that the evidence thus elicited from slaves was more to be relied upon than the testimony of freemen. The law however was, that no man could examine a slave without the adversary's consent. If either party desired the evidence of a slave, either his own or his opponent's, he made a formal challenge, proposing that the slave should be questioned, and specifying the terms, naming the person by whom torture should be applied and compensation awarded for the corporal injury.[5] If the challenge was accepted, the examination took place

(1) By a *δίκη εἰς ἐμφανῶν κατάστασιν*. See Meier and Schömann, Att. Proc. 375.

(2) On the whole subject of challenges, see Meier and Schömann, Att. Proc. 678—690. Hudtwalcker, Ueber die öffentlichen und privat-Schiedsrichter Diäteten in Athen. 41—58.

(3) See Demosthenes, cont. Stephanum, 1104, 1106, 1130; cont. Timotheum, 1197 Other examples will be found collected in Schömann and Hudtwalcker.

(4) Att. Proc. 679, &c. Hudtwalcker, 51.

(5) The examiners were called *βασανισταί*. See Demosthenes, cont. Pantænetum, 978; cont. Stephanum, 1120. Compare Aristophanes, Ranæ, 616.—

Ξανθιας.

βασάνιζε γὰρ τὸν παῖδα τουτονὶ λαβών,
κἄν ποτέ μ' ἕλῃς ἀδικοῦντ', ἀπόκτεινόν μ' ἄγων.

Αιακος.

καὶ πῶς βασανίζω;

Ξανθιας.

πάντα τρόπον, ἐν κλίμακι

[δήσας,

as agreed upon: the slave was placed on the wheel or rack, and under the pressure of so much torture as the examiners were authorized to administer answered the interrogatories put to him: his answers were written down, and afterwards produced in evidence, verified either by the examiners themselves, or by any other witness who was present.

The challenge might be given and accepted before the superintending magistrate, and the examination of the slave might be conducted in his office by a public servant; and we read even of a proposal to question a slave before the jury.[1] It was more usual however for the examination to take place in private. The challenges were most frequently given in the market-place, in the presence of several witnesses.

Notwithstanding what the orators assert as to the value of evidence obtained by torture, we gather from their writings, that the offers of the litigant parties, either to give up their own slaves for examination, or to examine those of their adversaries, were generally refused, (whether out of fear or out of humanity, it is difficult to say,) and that the object of the proposal was, to obtain a refusal and make it a matter of observation to the jury.[2] Thus, if the plaintiff refused to give up his slave, the defendant put the challenge in evidence, and argued upon it as follows:

"You see, the plaintiff dared not let me examine his slave. He could have given us all the information we desire; he knew all about the transaction; he knew a great deal too much for his master. Therefore he declined to give him up."

If the plaintiff refused to examine a slave offered him by the defendant, his comments upon the refusal were much to the same effect:

"You see, I offered to give up my slave to the question. He could have told you all about the affair. Notwithstanding the advantage of having him under torture, the plaintiff dared not examine him, for fear of his telling the truth."

A challenge of a peculiar kind, but by no means unfrequent, was the proposal to decide the controversy, either wholly or partially, by a solemn oath, to be sworn either by the challenger himself, or by his

δήσας, κρεμάσας, ὑστριχίδι μαστιγῶν, δέρων,
στρεβλῶν, ἔτι δ' ἐς τὰς ῥῖνας ὄξος ἐγχέων,
πλίνθους ἐπιτιθείς, πάντα τἄλλα, πλὴν πράσῳ
μὴ τύπτε τοῦτον μηδὲ γητείῳ νέῳ.

Αιακος.

δίκαιος ὁ λόγος· κἄν τι πηρώσω γε σοι
τὸν παῖδα τύπτων, τἀργύριόν σοι κείσεται.

Ξανθιας.

μὴ δῆτ' ἔμοιγ'. οὕτω δὲ βασάνιζ' ἀπαγαγών.

(1) Æschines, De Fals. Leg. 45. Demosthenes, cont. Euerg. 1143, 1144.
(2) Of this there are numerous examples in the orators. See Demosthenes, cont Onet. 874; cont. Neær 1388

opponent, or by some third person.[1] Even a woman, who was not competent to give testimony, could take an oath of this kind; for it could not be taken at all without consent of both parties.

Such offers were to the following effect:—"If you will admit my oath as proof, I offer to swear that I paid the money." Or—"If you will swear that you paid three talents, I will give up the cause." Or—"If your mother will swear she had a marriage portion of thirty minas, I give up the point," or "I forego my claim to that extent."

Offers of the first kind appear to have been rarely accepted: for it is manifest, they put the acceptor at the mercy of his adversary, with no other safeguard than his respect for the sanctity of an oath. And there was the like danger in making an offer of the second kind. It was done however occasionally, from some such motive as the following—either because the challenger had a high opinion of him to whom the oath was tendered; or because he had reason to believe the oath would not be taken; or because he had no means of proving his own case and took a desperate chance. Against the risk he might set off the advantage to be gained by a refusal: for, when a man declines to maintain by his own oath a fact which he is ready to prove by other means, a prejudice is raised against him—perhaps unjustly; for he may not know the fact of his own knowledge; but this equally serves the purpose of the adversary.

When a man refused to allow his opponent to swear an oath, it was good policy to offer to swear one himself: for then the arguments on either side, that arose out of the refusal, neutralized one another. I shall cite two cases from Demosthenes, to illustrate this Athenian practice.

Apollodorus, in an action against Timotheus, thus states his reason for refusing the defendant's oath:

"I have a word to say about the challenges to oaths; that which I gave the defendant, and that which he gave to me. For, when I had put an oath[2] into the box, he too proposed to take one and discharge himself. If I had not been well aware, how many solemn oaths he had sworn (to states and individuals) and perjured himself, I should have allowed him to take this oath. But when I can prove by witnesses and strong circumstantial evidence, that his nominees received the money from the bank, I think it would be folly to allow him to swear."

Mantitheus, another client of Demosthenes, in one of the causes between himself and Bœotus, tells the following story:[3]—

"Mantias, father of the speaker, had a mistress named Plangon. She had two sons, who were not sure by whom they ought to be fathered. They maintained they were the sons of Mantias, but this Mantias denied,

(1) Att. Proc. 686. Hudtwalcker, 53.

(2) *I.e.* the form of the oath which I proposed, but was not permitted, to swear, and of the refusal of which I intended to give evidence at the trial. See Demosthenes. cont Timotheum, 1203.

(3) Demosthenes, cont. Bœotum de nomine, 995.

and would not allow them to live with him. Bœotus, the elder of them, when he came to man's estate, commenced a suit, to compel him to acknowledge them. Pending this, the mother comes to Mantias, and advises him to propose, that she should swear the children were his; telling him she would refuse to swear it, and giving a solemn promise to that effect. He, deceived by her promise, puts in a challenge before the arbitrator, whereby he tenders the said oath to the mother. Bœotus accepts the challenge. Plangon breaks her promise, and takes the oath. Mantias cannot recede from his own terms, according to which the proof is conclusive against him. He therefore acquiesces, declares the children to be his own, introduces them to his clansmen, and enters their names in the register."

That an oath, which had such decisive effects, should be one of more than usual solemnity, was to be expected. The party swearing, if he had children, made them stand before him, and imprecated a curse upon their heads; or, if he had no children, he imprecated dreadful curses upon himself and his whole race; adding force to his words by touching full-grown victims.

To distinguish this from the ordinary oath by which a witness confirmed his testimony, we may call it an evidentiary oath. It is to this which Aristotle alludes, when he speaks of oaths as a kind of proof.[1]

The evidentiary oath of the Athenians may be compared to our old Saxon mode of trial by wager of law (which was abolished in the reign of William IV.); whereby a defendant, in an action of debt or detinue, was allowed to acquit himself of the charge by swearing that he did not owe the debt, or did not detain the goods, and producing eleven other persons, his neighbours, who swore that they believed him. These eleven persons were called compurgators. The origin of the custom seems to have been this; that in ancient times there was a difficulty in procuring evidence, most things being transacted between the parties in private; and the credit of a man depended very much on the opinion which his neighbours entertained of him; and the law presumed, that no man would perjure himself for any worldly advantage. Blackstone thus speaks of it in the third volume of his Commentaries, page 342.

"Trial by wager of law is not only to be found in the codes of almost all the northern nations, that broke in upon the Roman empire, and established petty kingdoms upon its ruins, but its original may be traced as far back as the Mosaic law:—'If a man deliver unto his neighbour an ass, or an ox, or a sheep, or any beast to keep; and it die, or be hurt, or driven away, no man seeing it; then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; and the owner of it shall accept thereof,

(1) He reckons them among the ἄτεχνοι πίστεις. Rhetor. i. 14. See his reasoning upon them, section 27, &c.

and he shall not make it good.' We shall likewise be able to discern a manifest resemblance between this species of trial, and the canonical purgation of the popish clergy when accused of any capital crime. The defendant or person accused was in both cases to make oath of his own innocence, and to produce a certain number of compurgators who swore they believed his oath. Somewhat similar also to this is the *sacramentum decisionis*, or the voluntary and decisive oath of the civil law; where one of the parties to the suit, not being able to prove his charge, offers to refer the decision of the cause to the oath of his adversary; which the adversary was bound to accept, or tender the same proposal back again; otherwise the whole was taken as confessed by him."

All challenges, of whatever kind, were made in writing, and, if accepted, were reduced to the form of a contract. If refused, they were put in as evidence together with the certifying depositions. Nor were they made only during the pendency of an action. It was often desirable, with a view to the bringing of an action, or for fear of one being brought by an adversary, to take some step by way of precaution, such as demanding inspection of a document for the purpose of securing evidence beforehand. Or a challenge might be made with a view to settle some dispute and prevent litigation.

When all these preliminaries had been gone through—when the parties had examined their witnesses, taken the answers of slaves, made their challenges, got ready their documentary proofs—in short, when all the evidence had been produced, and the whole of each party's case laid fully before the magistrate—the *instructio litis* was brought to a close. Meanwhile the hearing at his office might be adjourned from day to day for the accommodation of the parties, to enable them to adduce or prepare fresh evidence, to inquire into the law, to search the public archives, to consult their friends and advisers. During the progress of the examination, as the case gradually unfolded itself to the magistrate, he had an opportunity of forming a judgment as to its merits and as to its probable result.

What I have already said respecting his judicial power, will apply in a great measure to this stage of the proceedings also. Though without power to decide, we cannot doubt, that it was both his duty and his practice so far to carry and so to conduct the inquiry, as to satisfy his own mind, and make it in some degree appear to the parties themselves, on which side lay the justice of the case. The mere intimation of his opinion might have a useful effect, by leading to a compromise,[1] or inducing one of the parties to give in. If both were determined to go on, he proceeded to prepare the cause for trial. All the depositions and answers, challenges, documents, extracts from laws and decrees, &c., were carefully collected together and put into

(1) As to compromises of the cause in general, see Meier and Schömann, Att. Proc 700.

a box,[1] which the magistrate sealed and kept safe in his office until the court day. After the sealing of the box no further evidence could strictly be put in, and no evidence could be offered to the jury, which had not been produced before the magistrate. The rule was occasionally relaxed: its object however was a good one, to prevent surprise.[2]

The trial commonly took place about the thirtieth day after the commencement of the action; but this would vary according to circumstances. Mercantile, mining, and club causes were by law required to be decided within the space of a month: but to others there was no such limit prescribed.[3] The time occupied in the *instructio litis* depended on the nature and importance of the cause, the number of witnesses, &c. It might be purposely spun out under various pretences. The trial again might be postponed, either at the request of one of the parties, or by agreement between them, or owing to the state of public business. It would appear from the Oration against Midias (ante, pp. 92, 93, 95) that the delays and tricks of the law were as much a subject of complaint at Athens as elsewhere.

When the day of trial was fixed, notice was given to both parties. It was the business of the Thesmothetæ to publish a list of causes, and to assign to each court a sufficient number of jurors, drawn by lot from the whole of the Heliastic body. The parties summoned their respective witnesses, and, if they failed to attend, had a right of action against them. The summons or notice had the same effect as the subpœna has with us.[4]

On the appointed day the magistrate took his place as president of the court, and had the assistance of the city police[5] to keep order. The jury were impanelled and sworn.[6] When all was ready, the cause was called on. The parties could not appear by counsel, as with us: but personal attendance was necessary. If the plaintiff was not there, he was nonsuited. If the defendant did not appear, judgment was given against him by default, contrary to our practice, which compels the plaintiff to prove his case, whether the defendant appears in court or not. Judgment however was not given, if it could be shown that the plaintiff or the defendant was prevented from attending by some good cause, such as illness, the death of a near relative, or absence on the public service. This was to be shown by an affidavit[7] of the absent party, produced by some person duly authorized, who on behalf of his friend applied to have the trial put off. The other party might oppose the application, and produce (if

(1) Called ἐχῖνος. To put into the box, ἐμβάλλειν εἰς τὸν ἐχῖνον.

(2) Meier and Schömann, Att. Proc. 387, 691. Demosthenes in the second speech against Aphobus (p. 836) complains, that the defendant had waited till the last day to put a particular deposition in the box. This was a trick that must frequently have been practised.

(3) Meier and Schömann, Att. Proc. 115, 695.

(4) Ibid. 389, 674.

(5) These were the archers, who were generally Scythians or Thracians.

(6) Meier and Schömann, Att. Proc. 135.

(7) Ὑπωμοσία.

he pleased) a counter affidavit.[1] The jury decided whether the excuse could be received.[2]

Both parties being present, the proceedings commenced by the clerk of the court reading the record:[3] after which each party addressed the jury; first the plaintiff, and then the defendant. By the ancient practice they were obliged not only to attend in person, but to plead their own cause. This rule was afterwards relaxed, and either party by permission of the court might procure a friend to plead for him: leave was always granted in case of illness, or when from any mental infirmity a man was unable to conduct his own case without manifest disadvantage. Thus, when Isocrates was ill, his son Aphareus spoke for him in the cause about the Exchange. And the speech of Demosthenes against Leochares was delivered by a son for his father. As the jury liked to see and to hear the party himself, the most usual course, if he needed the assistance of an advocate, was to open his case in a brief address, and leave his friend to finish it. Many who were inexperienced in forensic practice, and who could afford to pay for it, got their speeches written, and indeed their whole cases prepared for them, by the professed speech-writers, a class of men who sprang up not long after the establishment of the jury system. Among these Antiphon was the first who became famous; after him came Lysias, Isæus, Isocrates, Demosthenes, Dinarchus. Most of the private speeches of Demosthenes, all of Isæus, and all of Lysias but one, were composed for clients.

The plaintiff and the defendant each addressed the court either once or twice; the defendant always having the last word. Whether they spoke once or twice, perhaps depended on the nature of the case; or it might be a mere question of arrangement for the day; or it might be optional with the parties themselves. Two short speeches would take up no more time than one long speech. The time, as we have seen, was measured by the waterglass; and we have some information given us about the quantity of water allowed in particular actions, which however makes us very little the wiser, for everything depends on the size of the tube through which the water ran. If either party got a friend to follow him, he gave up so much of his own time to the speech of the advocate, so that the whole of the

(1) Ἀνθυπωμοσία.
(2) Meier and Schömann, Att. Proc. 693, 704. Hudtwalcker, 90, 93.
(3) Thus in the mock trial in Aristophanes, Vespæ, 891.

Βδελυκλεων.

εἴ τις θύραισιν ἡλιαστὴς, εἰσίτω·
ὡς, ἡνίκ' ἂν λέγωσιν, οὐκ εἰσφρήσομεν.

Φιλοκλεων.

τίς ἆρ' ὁ φεύγων οὗτος; ὅσον ἁλώσεται·

Ξανθιας.

ἀκούετ' ἤδη τῆς γραφῆς· ἐγράψατο
κύων Κυδαθηναιεὺς Λάβητ' Αἰξωνέα,
τὸν τυρὸν ἀδικεῖν ὅτ μόνος κατήσθιεν
τὸν Σικελικόν· τίμημα κλῳὸς σύκινος.

time occupied in speaking was precisely the same, whatever number ot persons spoke on each side.[1]

The evidence of each party was produced during the course of his address to the jury, the rule being that every assertion either of fact or law, which required proof, was to be proved at the time it was made. Thus, if the plaintiff stated that there was an agreement in writing, he was bound as soon as possible, at least after finishing his comment or argument, to put in the agreement itself, together with the deposition in support of it. In like manner the statutes or statutory clauses, by which a point of law was established, were produced while it was fresh in the minds of the jury. All these proofs were read aloud by the clerk of the court, and in the meantime the waterglass was stopped. No deposition however could be read, unless the deponent himself attended to confirm it. The witnesses were brought up to the platform of the speaker, and, after their depositions had been read, they gave their assent either *vivâ voce*, by saying "that is my evidence" or the like, or by simply nodding their heads. Sometimes they were sworn in court; but this was not necessary for the affirmance of a deposition; and when they took an oath, the object probably was to obtain greater credit with the jury. If a witness who had received due notice failed to attend, he was solemnly called by an officer of the court,[2] and a fine of a thousand drachms was imposed on him: besides which, he was liable to an action at the suit of the party injured.[3] When a hostile witness was called, his deposition (containing such evidence as the party preparing it supposed him able to give) was read over by the clerk, and he was required to depose to it, or take an oath of disclaimer,[4] that is, to swear that he knew nothing about the matter, or was unable to give the testimony prepared for him. If he would do neither, he was fined a thousand drachms for his contumacy. An example or two will show how a hostile witness might be dealt with. I take the first from Isæus.[5] The speaker, intending to call a person in the interest of his opponent, says:

"I know he will be unwilling to give evidence contrary to the will which he produces. However call Hierocles, that in the presence of the jury he may either depose or take the oath of disclaimer. [Hierocles takes the oath of disclaimer.] I knew he would. The same person, who will testify to facts which never took place, will swear to ignorance of what he knows."

The next from Æschines:[6]

(1) See Meier and Schömann, Att. Proc. 705—717; and my article Συνήγορος in the Archæological Dictionary.

(2) This was the κλήτευσις, like our *calling a man on his subpœna*.

(3) A δίκη λειπομαρτυρίου, or βλάβης. The former lay, as Meier thinks, where a witness had promised to attend. The fine was a punishment for the contempt of court, like an attachment for disobeying a subpœna with us.

(4) Μαρτυρεῖν ἢ ἐξομνύειν. See Meier and Schömann, Att. Proc. 672, &c. And on the whole subject of witnesses see my article Μαρτυρία in the Archæological Dictionary.

(5) De Astyphili Hereditate 76.

(6) Contra Timarchum, 10.

"I will call Hegesander himself before you. I have drawn a deposition for him more decent than he deserves, yet a little more open than for Misgolas. I know he will swear ignorance and perjure himself. Why then do I call him to give testimony? That I may show you what sort of men this practice makes; how it teaches them to contemn the Gods, to disregard the laws, to have no sense of shame. Call me Hegesander. [The deposition is read, and Hegesander takes the oath of disclaimer.] I knew he would disregard his oath, men of Athens: I told you he would. And I am pretty sure that, as he does not choose now to give evidence, he will come forward presently for the defence."

Cross-examination of the witnesses in court was not allowed. It was incompatible indeed with the production of written evidence and with the whole scheme of arrangements, which were so contrived as to compress the trial into the shortest possible compass. Questions might be put by each party to the other, but only by the party who was addressing the court; for neither was permitted to interrupt the speech of his opponent. The jury however might at any time stop the speaker, and interrogate him, or ask for explanations, on matter of fact or law. The parties often requested them to exercise this right, and suggested the questions to be asked.[1]

The speeches on both sides being concluded, the magistrate called upon the jury to find their verdict. They voted by ballot as in criminal cases, using either stones, shells, beans, or balls of metal. The most common method of taking the ballot was the secret one, and was as follows. Each juror had two balls given him, a black and a white, or a pierced and an unpierced one. The black or pierced was for the plaintiff, the white or unpierced for the defendant. There were also two boxes;[2] one of brass, called the judgment box, into which the juror dropped that ball which he meant to vote with; the other a wooden box, into which he dropped the other ball, and was thus enabled to conceal his vote.

Another method was, to provide only one box, in which case the juror returned the ball which he did not use to the officer of the court. A third method was, to have two boxes, a plaintiff's and a defendant's box, and to furnish the juror with only one ball, which he put into the box of that party for whom he voted.

In inheritance causes, and some others, where there were more than two parties before the court, a ballot box was provided for each party, into which those jurors who meant to vote in his favour put their balls.[3]

The votes were counted by the officer of the court, and the result was declared by the magistrate. If there was a verdict for the plaintiff,

(1) See Meier and Schömann, Att. Proc. 717, 718.

(2) These were called *κάδοι*, *καδίσκοι*, or *ἀμφορεῖς*. The judgment box was called *κύριος*, the other *ἄκυρος*.

(3) See Meier and Schömann, Att. Proc. 720; and my article *Ψῆφος* in the Archæological Dictionary.

and damages had to be assessed, the course was pretty much the same as that upon a criminal trial, where sentence had to be passed by the jury; which having been already explained, I need not repeat it here.

If the plaintiff did not get a fifth part of the votes, he was condemned to pay a sixth of the damages,[1] as a penalty for his false claim, to the defendant. Some writers have adopted the statement of Pollux, that both plaintiff and defendant were liable to this penalty; but it is highly improbable that a defendant should have to pay a sixth part of the damages twice over. That he should be mulcted thus in a cross action, or upon the trial of a special plea, which was in the nature of a cross action, is a different affair. We require better authority than that of Pollux to believe the other proposition.[2]

I have next to speak of execution.

The judgment in a civil action, so far as it concerned the party, was left solely for him to execute. If he had recovered a specific chattel or a piece of land, he might himself take possession, by seizure of the one, by entry upon the other. If damages had been awarded, he was to levy them, either upon the goods of the defendant, or (if there were no goods) by seizure of his real property. In all this neither the superintending magistrate, nor any person like our sheriff or bailiff, was at hand to enforce the law. The court gave him his judgment, but lent him no further aid, except in some special cases, when a defendant was ordered to be imprisoned until payment of the debt.[3]

A day was given to the losing party to perform the order of the court, that is, to pay the damages, or surrender the property recovered from him.[4] What time was allowed for this purpose, we are not informed. If the judgment was not satisfied by the appointed day, the party who obtained it might proceed forthwith to execution.

Thus armed with the authority of the law, he seized on the property of his opponent, and this he retained or sold (as the case might be), unless it was redeemed by the owner within a reasonable time. If the value of the property seized exceeded the damages, the proper course would be to sell it, and (after satisfying himself) to pay over the surplus to his opponent.

If any one resisted the execution, (whether it was the party himself or any other person on his behalf,) he was liable to an action of ejectment;[5] in which the title to the property seized was the

(1) The ἐπωβελία, so called because it was an obol for every drachm.

(2) Meier and Schömann, Att. Proc. 729, &c. Böckh, Public Economy of Athens, transl. ii. 90; where the reasoning is not very forcible.

(3) In mercantile causes, where speedy execution was deemed necessary. See Meier and Schömann, Att. Proc. 745.

(4) The time allowed for payment was called προθεσμία.

(5) Ἐξούλης δίκη. See ante, p. 79, note 1, and my article Ἐμβατεία in the Archæological Dictionary.

subject of inquiry; but, if the defendant lost the cause, he was condemned to pay a fine equal to the damages (or to the value of the property) recovered in the former action.

Where lands or tenements had been recovered, the plaintiff might, if he pleased, bring an action to recover the rents and profits;[1] but, if the judgment in such an action remained unsatisfied, he was driven at last to his remedy by execution; so that this method would be a circuitous one.

The successful party might, without proceeding to execution, bring an action upon the judgment;[2] in which he complained, that his opponent had not satisfied the judgment by paying or restoring what was due to him. This would be his only course, if there were no effects to levy upon. Here also, if the defendant lost the verdict, the same fine was imposed on him as in the other case.

By such means was the suitor who recovered a judgment enabled to enforce his claim. The defendant became a state debtor. The consequences of being such I have already explained. If he sought to relieve himself by paying the fine, without satisfying the plaintiff, he was liable to another action; and this might be repeated *toties quoties*. Obstinacy must bend at last. Schömann thinks, that the state refused to give a discharge from the fine, unless the plaintiff received satisfaction. This course would certainly be less circuitous.[3]

The difficulties which a judgment creditor often experienced in the recovery of his rights, the tricks resorted to by the losing parties to evade payment and restitution, by concealing their effects, making fraudulent transfers, and the like, seem to have been much the same at Athens as in England. A notable example is furnished by the case of Demosthenes against Onetor. Such things are familiar enough to those who know anything of English law. Our suitors have the advantage of ministerial officers to levy their judgments, or to put them in possession of their property; and the public peace is by such means better secured, when the process of the law is executed by its known officers, whom no man dares to resist. But the frauds practised upon creditors are in no way diminished by the machinery of our law, as I could easily show.

The last points here to be noticed are, the proceedings to obtain a new trial or reversal of the judgment.

The decisions of an Athenian jury were (generally speaking) final. There was no appellate tribunal at Athens, by which they could be set aside.[4] Appeals were allowed from the public arbitrators to a

(1) Ἐνοικίου δίκη, for a house; καρποῦ δίκη, for land. See those titles in the Archæological Dictionary, and the Attic Process, p. 749.

(2) To this action also was given the name of ἐξούλης δίκη: and suitably enough. For when you withhold from a man what is due to him, you keep him out of his property, if you don't turn him out.

(3) See the Attic Process, p. 751.

(4) There might be an appeal to a foreign tribunal, pursuant to international treaty, in causes between an Athenian and a foreigner. See the Attic Process, p. 773, &c. and my article Δίκαι ἀπὸ συμβόλων in the Archæological Dictionary.

[Appeals

jury; but there was no appeal from one jury to another. The magistrates who presided in the different courts were not all indeed of equal rank or importance; but the courts had a coordinate jurisdiction, and were independent of each other; the jurors in each were virtually the same body of men, representing the whole people of Athens, and exercised the powers of a supreme tribunal.

Although however there could be no appeal from the jury, there were certain causes for which the court itself which pronounced the judgment could set it aside or grant a new trial. These were not indeed so various as with us. For example; a new trial was never granted for errors in law, as where a statute had been misquoted or misconstrued; nor for a verdict against evidence, nor for improper admission or rejection of evidence, nor for any misconduct or irregularity on the part of the magistrate or the jury. The peculiar character of the Athenian tribunal rendered it impossible to give relief upon any such grounds as those. There were, in short, two cases only in which the proceedings could be set aside; first, where a judgment for non-appearance had been given wrongfully; and secondly, where a verdict had been obtained by false testimony.

We have seen, that if either of the parties did not attend before the magistrate on the hearing day, or in court on the day of trial, judgment was given against him, unless some valid excuse was shown for his absence. But it might happen that his absence was inevitable, and yet there was no means of proving this at the time; or that the excuse offered by his friend or agent was improperly rejected; or that the opponent had prevailed against him by unfair means or false representations. Again, a defendant might never have been summoned, in which case the whole of the proceedings would be a nullity. In any of such cases it was competent for the party injured, within two months after the judgment, to apply to the magistrate for a new trial; a rule for which (as we should say) was granted as a matter of course in the first instance, and a day named for the opponent to show cause against it. On that day the mover of the rule produced an affidavit in support of it (this was indispensable), and perhaps gave sureties for the judgment; the party who showed cause might put in a counter affidavit; and evidence might be offered on either side. It rested with the magistrate whether he should grant the new trial or refuse it. Schömann thinks that this was commonly decided by a jury. My view is, that the setting aside of a judgment by default was in most cases the act of the magistrate; that such relief was given as a matter of right, if anything like a reasonable ground was shown for it; that the magistrate never refused it, when he himself thought that it was due; and that, where he had doubts upon the subject only, he gave the mover an

Appeals from a magistrate to a jury upon the imposition of a fine, and from the decision of the Demotæ to a jury, upon the exclusion of a member from the register do not belong to the present subject. See Hudtwalcker, *Ueber die Diäteten*, 123.

opportunity of applying to a jury. For example; when the defendant alleged that he had never been summoned, and the plaintiff's witnesses swore that he had been, the magistrate, if he had any doubt about it, would leave him to indict the witnesses before he granted a new trial.[1]

The second case in which a judgment could be set aside was, where the verdict of the court had been procured by false testimony.

It has already been mentioned that a false witness was liable to an action at the suit of the injured party. In such an action the main questions, as upon an indictment for perjury in our country, were, 1. whether the evidence given was true or false; 2. whether it was material to the decision of the original cause. If it in any way could have had an influence in procuring that verdict, by which the suitor sustained an injury, the false witness was liable to make him compensation. It is obvious however, that the recovery of damages from the witness could not always be a compensation for the injury he had done. Thus, a lost inheritance involved the loss of family rights, sacred and civil, which no money could either recompense or restore. The very house or land might be endeared to the owner by a thousand recollections. In such a case justice required, that the mischief should be undone rather than paid for. The Athenian law therefore allowed the party, upon conviction of one or more of the witnesses by whose false testimony he lost the verdict, to obtain a new trial. Many similar examples may be conceived, in which a new trial would be equally just and desirable; and we should be glad to know when, and how, and under what regulations and restrictions this right could be exercised. Unfortunately we have but scanty information upon the subject; and that cannot be depended on.

It is said by the Scholiast on Plato,[2] that new trials could be obtained on this ground in inheritance causes, in suits for false testimony, and upon indictments for usurpation of civic rights—but in no other instances. There could certainly be no reason for confining the remedy to these cases; and the correctness of the statement has been justly questioned by Schömann. The Scholiast was manifestly wrong upon another point—where he says that, in order to get a new trial, it was necessary to convict more than half the number of witnesses. This statement, which does not agree with what we read in Isæus,[3] is in fact a misapprehension of Plato himself, who, without saying that the law was so at Athens, recommends that it should be in his imaginary republic. To make it a condition for a new trial, that a given number of the witnesses should be convicted, was

(1) See Meier and Schömann, Att. Proc. 753—759. The expression for obtaining new trial after judgment by default was, τὴν ἔρημον ἀντιλαχεῖν, sc. δίκην. The versal of a judgment (a more general expression) ἀνάδικος δίκη.

(2) Leg. xi. 14.

(3) De Hagniæ Hereditate, 88. δίκαι γὰρ ἐνεστήκασι ψευδομαρτυριῶν, κελεύει δ' ὁ νόμος, ἐὰν ἁλῷ τις τῶν ψευδομαρτυριῶν, πάλιν ἐξ ἀρχῆς εἶναι περὶ αὐτῶν τὰς λήξεις.

an idea more fit for a philosopher than for a lawyer. Another of his rules, that the jury should decide whether the false evidence had procured the verdict, was more probably founded on the practice of his own country. We may perhaps assume, that upon its being expressly found by the jury, that the false evidence had been instrumental in producing such result, the reversal of the judgment followed as a matter of course.[1]

APPENDIX X.

ARBITRATION.

It has sometimes been regretted by law-reformers in this country, that we have no domestic tribunals, to which disputes may be referred in the first instance for amicable adjustment, without resorting to the more troublesome and costly process of a lawsuit. In some countries there are such tribunals; they are called courts of reconciliation; their object, as the name itself denotes, is to reconcile the parties; and, to effect such purpose the more completely, they profess to act on principles of substantial justice and equity, without being bound by legal technicalities.[2]

Though we have no public tribunals of this kind in England, references of disputes to private arbitration are very common, as well after an action has been commenced as before. A brief sketch of our own practice will not be uninteresting to the scholar, as introductory to the subject of the Athenian.

Nor need I to apologise for the course which I have occasionally taken in this book, of referring to the practice of English law, for the purpose of illustration and comparison. Had I followed the bent of my own inclination, I should have done so much more frequently. For of what use can it be to an English gentleman, to cram his head with the terms of Attic process, when he is utterly ignorant of that of his own country? It is only by some acquaintance with the latter that he is competent to understand the former. Learning should not be one-sided; nor should names be taught without things. It is this which makes the *pedant;* a genus, of which there are too many among us.

(1) See the Attic Process, p. 761.

(2) One of the principal objects of arbitration originally was to have settlements of disputes upon equitable principles: as we read in Aristotle's Rhetoric, i. 13, *καὶ τὸ εἰς δίαιταν μᾶλλον, ἢ εἰς δίκην βούλεσθαι ἰέναι· ὁ γὰρ διαιτητὴς τὸ ἐπιεικὲς ὁρᾷ· ὁ δὲ δικαστὴς τὸν νόμον· καὶ τούτου ἕνεκα διαιτητὴς εὑρέθη, ὅπως τὸ ἐπιεικὲς ἰσχύῃ.* Courts of equity were at first established for the like purpose; but they soon deviated from their original design, and at this day they are but law-courts of another kind, supplying indeed some of the defects of the common law, but bound by fixed principles and precedents as much as any court in Westminster Hall.

It was always open to parties in this country, to refer a matter in dispute to the decision of some third person, under an agreement between themselves that he should have power to determine it. But there was this disadvantage. If the losing party refused to perform the award, there was no power of compelling him. The only remedy was to bring an action on the agreement, or upon the original matter in dispute: but the benefit of the reference was almost entirely lost.

This inconvenience was obviated partly by the courts of law, and partly by the legislature. Where an action was pending, and the parties wished to refer it to arbitration, they obtained leave to do so, and a rule of court was drawn up for that purpose: the effect of the rule was, that the arbitration was conducted under the authority of the court, and the parties were amenable to its jurisdiction; so that, if any of them disobeyed the award after it was duly made and published, the judges would punish him for contempt of court; while on the other hand, if the arbitrator misbehaved himself, or if the award was manifestly illegal, they would set it aside; and, in short, they exercised a general superintendence over the whole affair of the reference. It was in the reign of Charles II. that this practice began; and it was found to work so well, that in the reign of William III. a statute was passed, enabling parties before action to submit their disputes to arbitration on the same terms as after action, by agreeing that their submission should be made a rule of court, and thus making the award enforceable by attachment.[1]

(1) The statute is the 9 and 10 William III. c. 15. It consists of two sections, which I subjoin.

I. Whereas it has been found by experience that references made by rule of court have contributed much to the ease of the subject in determining of controversies, because the parties become thereby obliged to submit to the award of the arbitrators under the penalty of imprisonment for their contempt in case they refuse submission. Now for promoting and rendering the awards of arbitrators the more effectual in all cases for the final determination of controversies referred to them by merchants and traders and others concerning matters of account or trade or other matters, be it enacted, That it shall and may be lawful for all merchants and traders and others desiring to end any controversy, suit or quarrel for which there is no other remedy but by personal action or suit in equity, to agree that their submission of their suit to the award or umpirage of any persons shall be made a rule of any of his Majesty's courts of record which the parties shall choose, and to insert such their agreement in their submission or the condition of the bond or promise whereby they oblige themselves respectively to submit to the award or umpirage of any persons, which agreement being so made and inserted in their submission or promise or condition of their respective bonds shall or may, upon producing an affidavit thereof made by the witnesses thereunto or any one of them in the court of which the same is agreed to be made a rule, be entered of record in such court, and a rule shall thereupon be made by the said court, that the parties shall submit to and finally be concluded by the arbitration or umpirage which shall be made concerning them by the arbitrators or umpire pursuant to such submission; and in case of disobedience to such arbitration or umpirage the party neglecting or refusing to perform and execute the same shall be subject to all the penalties of contemning a rule of court where he is a suitor or defendant in such court, and the court on motion shall issue process accordingly, which process shall not be stopped or delayed in its execution by any process of any other court either of law or equity, unless it shall be made appear on oath to such court that the arbitrators or umpire misbehaved themselves, and that such award, arbitration or umpirage was procured by corruption or other undue means.

[II. And

According to the practice thus established arbitration is for the most part carried on in England at the present day. Strange indeed to say, notwithstanding the advantage of referring matters in difference before litigation, it is more customary to do so after it has commenced. The course pursued is usually as follows. In the progress of a cause the parties become convinced, that a court of law is not the fittest tribunal to decide the points at issue between them; for instance, where there are long and intricate accounts to go through, or details that require the attention of scientific persons; or where there is a family quarrel that ought not to be dragged before the public; or wherever the dispute is of such a nature, as to require an equitable adjustment rather than a single peremptory decision. Strong feelings have in the first instance hurried the plaintiff into an action, and prevented the defendant from offering any reasonable terms. Reflexion afterwards, or the fear of expense and exposure, induce them to consent to a reference. An order for that purpose is made by a Judge at chambers. Often, after the cause has been brought into court and even partly heard, the Judge himself, seeing the difficulties which attend the trial, and the impossibility of meeting the exigencies of the case by a verdict, will advise a reference. By a late statute the judges are empowered, upon an application by either of the parties, to order a cause to be referred, where the questions turn upon matters of account, which cannot conveniently be tried by a jury.[1]

A single arbitrator is generally appointed, when a cause is referred; as a barrister, a surveyor, an engineer, or any other person whose professional knowledge fits him to be a judge of the case. It is not unusual for each party to appoint one referee, with power to nominate a third in case of a difference of opinion. Such third person is called an umpire.

Let us now see what was the practice of the Athenians when they referred their disputes to arbitration.

That a vast deal of business was done by arbitrators at Athens, appears clearly enough from the private speeches of the orators. To understand what we read about them, we must first distinguish between two different kinds of arbitrators, the official or public, who were appointed by the state, and the private ones, who were chosen by the parties.

The official or public arbitrators were a sort of inferior judges, forty in number, four being chosen by lot annually from each tribe. They were required to be at least fifty years of age, and took an oath to

II. And be it enacted, that any arbitration or umpirage procured by corruption or undue means shall be judged and esteemed void and of non-effect, and accordingly be set aside by any court of law or equity, so as complaint of such corruption or undue practice be made in the court where the rule is made for submission to such arbitration or umpirage before the last day of the next term after such arbitration or umpirage made and published to the parties.

(1) By the 17 and 18 Victoria, chapter 125, sections 3 and 6. They may refer the cause either at the trial or before, and either to an arbitrator chosen by the parties, or to an officer of the court or in the case of country causes to a county court judge.

discharge their duties faithfully.[1] Like all persons holding offices of trust, they were liable at the end of their official term to be called to account for misconduct: in what manner, will be explained presently.

Their jurisdiction was limited to civil actions, or at least to causes in the nature of civil actions. It was subordinate in every case to that of the superintending magistrate; and it was subject to appeal; but there was no limit to the amount of the claim which they were empowered to try. Anciently all causes were brought before them in the first instance, in order to save the cost of the jury process. Afterwards it was left to the option of the plaintiff, whether he would have his cause sent to an arbitrator or a jury. After the commencement of the action, and commonly on the first day of hearing in the magistrate's office, he signified his intention. If he chose to have the trial before an arbitrator, the magistrate assigned him one, chosen by lot, out of the tribe of the defendant.[2]

To the arbitrator thus chosen the cause, together with its pleadings and other documents, was transferred. He proceeded to hear the parties and to receive the evidence, or such further evidence as was required, in short, to prepare the case for decision, in the same way as the magistrate would have done if the cause had been intended for a jury.[3] He united in himself the functions of the magistrate and the jury; having not only the *instructio litis* to perform, but also to pronounce an award. And in preparing the case for decision it was necessary for him to be quite as careful as the magistrate, because in the event of an appeal the evidence, as prepared by him, had to be sent up to the superior court.[4] He therefore sat from day to day, as long as there remained any evidence to produce, or any other preliminary process to execute. When he was satisfied that the cause was ripe for decision, he appointed a day for final hearing; upon which each party came prepared to close his case, and perhaps to sum up his evidence in a short speech. If either of the parties failed to attend, the arbitrators might pronounce judgment by default, (which might be set aside on a motion, properly supported, within ten days;) but he had the same power as the magistrate to receive excuses and grant adjournments.[5] Upon the attendance of both parties and in their presence he declared his award, and forthwith made a return thereof (together with all documents in the cause) to the superintending magistrate, by whom the award was countersigned and

(1) Hudtwalcker, *Ueber die Diäteten*, 1, 5, 8, 40. All the authorities on the subject are collected in this treatise.

The arbitrators are to be distinguished from the district judges, or δικασταὶ κατὰ δημούς, who were likewise forty in number; and of whom I shall speak in a future volume.

(2) Hudtwalcker, ibid. 33, 64, 72.

(3) Ibid. 72, 75, &c.

(4) Ibid. 120, 128.

(5) Ibid. 89, 90, 99, 112. The expression for obtaining a new trial of the reference was τὴν μὴ οὖσαν (sc. δίαιταν) ἀντιλαχεῖν.

entered upon record. The documents were carefully kept in the office, to be ready in the event of an appeal.[1]

The plaintiff paid to the arbitrator in the first instance a fee or a drachm; and each of the parties paid him another drachm upon his administering to them the customary oaths.[2] This for his time and trouble was not too high a remuneration. He rendered a more than equivalent service, by relieving them from the anxiety attendant upon a trial by jury, where the result was so hazardous and so precarious, so much depending on a powerful address, or a clever statement of the case, or even upon the exertion of private influence. The judgment of the arbitrator drew with it no penal consequences either to the plaintiff or defendant, beyond the loss of the cause or the amount of damages. The proceedings before him were less formal and solemn. He would allow the parties to address him in a familiar way, as often as any new point or argument arose: and no one would ever think of having a speech prepared by counsel to be spoken before him. There seem to have been no regular places assigned for the arbitrators to hold their sittings: they used the Heliæa, or any other court or public room that was vacant, according as it was found convenient.[3] It does not appear that there were any spectators in attendance, as there were in the jury courts; and we may easily imagine that a trial before an arbitrator would have but little interest for strangers. The power of appeal must have operated as a check upon misbehaviour. We know indeed, that the appeals from the decision of arbitrators were very numerous; but this was no more than might have been expected. There could not (as a general rule) be any great confidence in the arbitrators, who were appointed at hap-hazard, and not on account of their ability. The resort to them was frequently intended as a tentative process, by which suitors felt their way through the case. The losing party is always dissatisfied: and at Athens he was encouraged to appeal by the facilities and the chances which the law afforded him.

The most effectual check to any corruption or negligence on the part of the arbitrators was their official responsibility, for which an ample provision was made by the law. Our knowledge upon this subject is derived from the Oration of Demosthenes against Midias, (see ante, p. 94,) from Harpocration, and the comment of Ulpian. It appears that in the month of Thargelion, the last month but one of the year, (after which their duties entirely ceased, for there was no judicial business done in the month of Scirophorion,) the public arbitrators were bound every day at a certain time to attend in the office of the Auditors, in order that suitors or any persons who had suffered by their neglect of duty might have an opportunity to accuse them. If any accusation was preferred, it was brought to trial in due

(1) Hudtwalcker, *Ueber die Diäteten*, 82.
(2) The fee was called παράστασις. Hudtwalcker, ibid. 14.
(3) Ibid. 12.

course by the Auditors, and the penalty upon conviction was disfranchisement. The process against them, according to Harpocration, was an impeachment. It is a matter of no great importance, what it was called: yet I should rather judge that Harpocration was wrong and that the proceeding was by indictment, and not impeachment.[1]

Demosthenes relates how Midias contrived to revenge himself on the arbitrator Straton, who had given an award against him for non-appearance. Straton attended before the Auditors every day of the month but the last, which, being the first day of the new moon, was by vulgar error confounded sometimes with the first of the next month. Midias came on that day, the thirtieth of Thargelion, and preferred a charge against Straton, who not being in attendance, as he ought to have been, suffered judgment by default, and incurred the penalty of disfranchisement. Demosthenes complains that Straton was never summoned to answer the charge, contrary to the practice upon ordinary prosecutions, which required that the accused party should receive a personal summons, and that it should be proved by witnesses. But here occurs a question—Why should it be necessary to summon the arbitrator, when he was bound to appear before the Auditors for the very purpose of answering any charge that might be brought against him? Ulpian, by way of explaining this, suggests that it was the practice for the arbitrators to be at hand to answer complaints, but that they were under no legal obligation to do so.[2] Hudtwalcker observes upon it as follows: [3]

"It is a surprising circumstance, when the arbitrators were obliged to attend every day of the month Thargelion in the market-place, that the complainant should have to summon them previously. At the first sight it does not appear why that should be necessary. The difficulty vanishes however, when one considers that security had to be provided for both parties—for the complainant, lest the arbitrators should by excuses of absence and other means drag the thing on to the end of the month; for the arbitrators, to prevent their being surprised by malicious accusers."

This is not satisfactory. It appears indeed to have been the law, that no accusation could be preferred after the last day of Thargelion. But, if any one preferred his charge within the month, it could be tried afterwards, however the time might be spun out by the manœuvres of the defendant. And on whatever day an accuser might

(1) He perhaps got his information from Demosthenes, and was misled by the expression τὸν πρυτανεύοντα, which, like Hudtwalcker, he understood to mean the chairman of the Prytanes, whereas it means the chairman of the Logistæ. See Meier and Schömann, Att. Proc. 215, note 6.

(2) ἔθος δὲ ἦν ἐν ἡμέραις ῥηταῖς εἴς τινα τόπον συλλέγεσθαι τοὺς διαιτητάς, ἵνα ὁ βουλόμενος κατηγορεῖν αὐτῶν, ὡς ἢ πρὸς χάριν ἢ δι' ἔχθραν δικασάντων ἢ διὰ κέρδος, ἑτοίμως ὑπακούσωσι καὶ ἀποκρίνωνται.

(3) *Ueber die Diäteten*, p. 27. At page 101 he gives a full explanation of this passage of Demosthenes, pointing out the errors of those who confounded the proceeding of Midias to obtain a new trial with his proceeding against Straton. The readers of my translation are not likely, I imagine, to fall into such error.

choose to appear against the arbitrator, he would doubtless have ample time allowed him to prepare his defence. We are not to suppose that, if the charge was preferred on the last day of the month, it was also to be tried on that day.

The learned commentator has fallen into the error of supposing, that the complaint of Demosthenes must be well founded. Yet, if it were so, why did not Straton take measures to set aside the judgment? This of course would have been open to him, if a summons had been necessary and he had not received one. Again, if any wrong was done him, the Auditors were more to blame than Midias; for they should have seen that the summons was duly proved by witnesses. It is observable also, that Demosthenes does not allege directly, that the judgment against Straton was illegal, but only insinuates it, or rather puts it as a matter of aggravation, that he should have been condemned in his absence without any notice, the main charge against Midias being, that he had been guilty of sharp practice, and taken advantage of the ignorance of a man who was no lawyer.

We have now to speak of the private arbitrators at Athens.

These were persons to whom a dispute was referred by agreement of the parties. Their power depended on the terms of the reference. It was usual, before commencing an action, to try what could be done by the mediation of friends. They would endeavour by advice and persuasion to reconcile the parties, or at least to bring them to some amicable arrangement.[1] But if the parties desired to terminate their dispute finally, without the risk and publicity of a lawsuit, there was no better way, than to submit all their matters in difference to the judgment of some person in whom they both had confidence. An agreement was then drawn up, whereby they mutually engaged to abide by his decision. He was bound by oath to decide impartially and, after hearing the case on both sides, gave his award in writing. Such award had the force of a judgment, and could be pleaded as such; nor was it subject to appeal. Herein lay the chief difference between the award of a public and the award of a private arbitrator, as we learn from the law cited in the Oration against Midias, (ante, p. 97.)[2] Yet it appears, that at any time before the award was actually published either of the parties was at liberty to revoke the submission. Thus Demosthenes and Aphobus referred their dispute to three private persons; but Aphobus, seeing that, if they were allowed to proceed, they would make an award against him, revoked their authority; upon which Demosthenes, having brought an action, carried it before a public arbitrator, from whose decision Aphobus appealed.[3]

The reference was commonly made either to a single person or to three. If the last, two of them were commonly the friends and

(1) Such persons were called διαλλακταί. They were like the *disceptatores domestici* of Cicero: (Pro Cæcinâ, 2:) the *gute Männer* of Hudtwalcker, pp. 157, 180.
(2) Hudtwalcker, ibid. 60, 155, 176, 180.
(3) Demosthenes, cont. Aphobum, 861. Compare the Oration cont. Bœotum de Dote, 1021. Hudtwalcker. 178.

nominees of the respective parties, and the third was an impartial umpire between them. This was the case in the reference between Demosthenes and Aphobus.[1]

A public arbitrator might be chosen, like any other man, to act as a private referee. His official character would in some measure be a recommendation, and still more so, if he had had some experience and got a reputation for deciding justly. Straton, as we have seen, was a public arbitrator, and to him the cause of Demosthenes against Midias was referred by consent.[2]

Sometimes parties agreed to compromise their disputes upon certain terms, and appointed an arbitrator for the sole purpose of carrying the arrangement into effect. He then had no discretionary power, but was simply to make an award according to the terms agreed on. The award thus made was like any other award, a bar to a future action. The following passage from the Oration of Isocrates against Callimachus will illustrate this, as well as some other points that we have been considering:[3]

"I was at last prevailed upon (for the whole truth shall be told you) to give the plaintiff two hundred drachms. And, to put it out of his power to trump up a new demand, we appointed Nicomachus of Bate to arbitrate between us under terms.[4]

"At first he kept to the agreement: but afterwards having conspired with Xenotimus, (the man who garbles the laws and bribes the courts and corrupts the magistrates and contrives all kinds of mischief,) he brings an action against me for ten thousand drachms. Upon my tendering an affidavit, that the action was barred by an award, he took no proceedings against the witness, knowing that, if he did not get a fifth part of the votes, he should be mulcted in a sixth of the damages, but he got leave of the magistrate and entered the same action again, so as to risk payment of the court-fees only.[5] Finding myself in a difficulty, I thought it best to let us both take an equal chance, and to come into court before you. These are the facts.

"I hear that Callimachus not only means to support his claim by falsehood, but intends to deny the award, and is prepared with an argument of this sort, that he should never have submitted to the arbitration of Nicomachus, whom he knew to be on intimate terms with me, and that it was not likely he should accept two hundred drachms in lieu of ten thousand. But remember, in the first place, we submitted

(1) Compare the Oration cont. Apaturium, 897.
(2) Ante, p. 96. Hudtwalcker, 59.
(3) Isocrates. cont. Callim. 13. ed. Bekker. Compare Isoc. Orat. Trapez. 26. Hudtwalcker, 60, 165.
(4) τελευτῶν δ' οὖν ἐπείσθην (ἅπαντα γὰρ εἰρήσεται τἀληθῆ πρὸς ὑμᾶς) δοῦναι τούτῳ διακοσίας δραχμάς· ἵνα δὲ μὴ πάλιν ἐξείη συκοφαντεῖν αὐτῷ, δίαιταν ἐπὶ ῥητοῖς ἐπετρέψαμεν Νικομάχῳ Βατῆθεν.
(5) προβαλλομένου δ' ἐμοῦ μάρτυρα ὡς οὐκ εἰσαγώγιμος ἦν ἡ δίκη διαίτης γεγενημένης, ἐκείνῳ μὲν οὐκ ἐπεξῆλθεν, εἰδὼς ὅτι, εἰ μὴ μεταλάβοι τὸ πέμπτον μέρος τῶν ψήφων, τὴν ἐπωβελίαν ὀφλήσει, πείσας δὲ τὴν ἀρχὴν πάλιν τὴν αὐτὴν δίκην ἐγράψατο ὡς ἐν τοῖς πρυτανείοις μόνον κινδυνεύσων.

to arbitration not as contesting parties, but under terms of compromise; so that there was nothing strange in his choosing Nicomachus for arbitrator; indeed it would have been much more strange if, having agreed upon the case, he had quarrelled about the arbitrator.[1] In the next place, though it was not likely that, if ten thousand drachms were due to him, he would have settled for two minas, yet, if he were making an unjust and vexatious demand, there is nothing wonderful in his choosing to take that sum. Further, if upon a large claim he recovered a very little, it is no proof for him that the award has never been made, but a very strong proof for me that his claim was altogether unfounded. I wonder he thinks himself clever enough to see, that it was unlikely he should accept two hundred drachms for ten thousand, yet does not suppose me able to have discovered, that, if I wished to tell a falsehood, I ought to have said he had given a larger sum. I submit that, as it would have been a proof for the plaintiff, that there had been no award, if he had convicted the person who swore the affidavit, it should be equally good proof of the truth of my statement, when it appears that he ventured not to take any proceedings against the witness."

APPENDIX XI.

CLUBS.

THE institution of clubs, both for social and for political purposes, has been common in all ages, from the time of the Athenian *Erani* to the Jacobin clubs of Paris. The most ancient kind were the convivial. It was common among the early Greeks for friends to meet together and have a dinner or supper at their joint expense. This was done either by each bringing his own provisions with him, as they do at our picnics, or by each contributing his share in money and deputing one to cater for the rest. Homer and Hesiod allude to banquets of this sort.[2] There is frequent mention of them by writers who describe the customs of later periods, as Aristophanes, Xenophon, Athenæus, and others.[3] The Athenians, an eminently convivial people, were

(1) Ὑμεῖς δὲ ἐνθυμεῖσθε πρῶτον μεν ὅτι την δίαιταν οὐκ ἀμφισβητοῦντες ἀλλ' ἐπὶ ῥητοῖς ἐπετρέψαμεν, ὥστε οὐδὲν ἄτοπον ἐποιησεν εἰ Νικόμαχον εἵλετο διαιτητην, ἀλλὰ πολὺ μᾶλλον εἰ περὶ τῶν πραγμάτων ὡμολογηκὼς περὶ τοῦ διαιτητοῦ διεφέρετο.

(2) Odyssey, i. 225.—

> Τίς δαὶς, τίς δὲ ὅμιλος ὅδ' ἔπλετο; τίπτε δέ σε χρεώ;
> Εἰλαπίν' ἠὲ γάμος; ἔπει οὐκ ἔρανος τάδε γ' ἐστίν.

Ibid xi. 414.—

> Ἢ γάμῳ ἢ ἐράνῳ ἢ εἰλαπίνῃ τεθαλυιῃ.

Hesiod, Opera et Dies, 722.—

> Μηδὲ πολυξείνου δαιτος δυσπέμφελος εἶναι
> Ἐκ κοινοῦ· πλείστη δὲ χάρις δαπάνη τ' ὀλιγίστη.

(3) Xenophon, Memorabilia, iii. 14.—
Ὁπότε δὲ τῶν ξυνιόντων ἐπὶ δεῖπνον οἱ μὲν μικρὸν ὄψον, οἱ δὲ πολὺ φεροιεν, ἐκέλευεν ὁ Σωκράτης τὸν παῖδα τὸ μικρὸν ἢ εἰς τὸ κοινὸν τιθέναι, ἢ διανέμειν ἑκάστῳ τὸ μέρος

fond of picnics, as they were of feasting in general, and frequently made up parties to dine in the country or at the sea-side, or at the town-house of one of the company, or even at less reputable places. Thus, Antipho says in Terence's play of the Eunuch, Act III. Scene 4.—

> Heri aliquot adolescentuli coiimus in Piræo,
> In hunc diem ut de symbolis essemus. Chæream ei rei
> Præfecimus: dati annuli: locus, tempus constitutum est.

where *symbolæ*[1] are the subscriptions to the feast; *annuli* the rings given as pledges by each of the messmates.

The convivial habits of the Athenians led them to form permanent clubs for dining together at stated periods, as once a month, or oftener. Each club had its president, *Eranarches*, who took the chair (as we should say) at the banquets: also its rules and bye-laws, fixing the places of meeting, the amount of subscription, and other matters.

Nothing was more natural than that persons who met frequently at the same table should increase their intimacy, and then combine together for further objects. Clubs, which originally were associations for good cheer and good fellowship, were enlarged into institutions for mutual assistance and relief; bearing a resemblance to our friendly societies, but differing in this, that they did not raise any permanent fund, or regulate their charities upon any fixed plan. There is a good deal of obscurity upon the subject of these Athenian societies. With respect to their objects—it is not to be supposed that every club existed both for feasting and for charity; nor on the other hand can I accede to Meier's view, that the two kinds of clubs were always distinct. It is likely enough that there should be purely convivial clubs: but when other objects were proposed, the monthly feast would rarely, I should think, be omitted. Athenians were too like Englishmen for that.

The mode of dispensing relief was simple. When a man was reduced to distress by illness or other misfortune, he applied to his club for assistance; and each member was expected to contribute something. The president collected subscriptions for him, and sometimes advanced them in the first instance out of his own pocket, as he might advance the money for a dinner. The relief thus afforded

Οἱ οὖν τὸ πολὺ φέροντες ᾐσχύνοντό τε τὸ μη κοινωνεῖν τοῦ εἰς τὸ κοινὸν τιθεμένου, καὶ τὸ μὴ ἀντιτιθέναι τὸ ἑαυτῶν· ἐτίθεσαν οὖν καὶ τὸ ἑαυτῶν εἰς τὸ κοινόν. καὶ ἐπεὶ οὐδὲν πλέον εἶχον τῶν μικρὸν φερομένων, ἐπαύοντο πολλοῦ ὀψωνοῦντες.

Athenæus, viii. 362, explains the term ἔρανος:—

τὰς θυσίας καὶ τὰς λαμπροτέρας παρασκευὰς ἐκάλουν οἱ παλαιοὶ εἰλαπίνας, καὶ τοὺς τούτων μετέχοντας εἰλαπιναστάς. ἔρανοι δέ εἰσιν αἱ ἀπὸ τῶν συμβαλλομένων εἰσαγωγαί, ἀπὸ τοῦ συνερᾶν καὶ συμφέρειν ἕκαστον. καλεῖται δὲ ὁ αὐτὸς καὶ ἔρανος καὶ θίασος, καὶ οἱ συνιόντες ἐρανισταὶ καὶ συνθιασῶται.

A picnic was sometimes called δεῖπνον ἀπὸ σπυρίδος, because the provisions were carried in a basket. Ibid. 365. Compare Aristophanes, Acharnians, 1138.—

τὸ δεῖπνον ὦ παῖ δῆσον ἐκ τῆς κιστίδος.

See Becker's Charicles, Excursus I. to scene vi.

(1) Compare Aristophanes, Acharnians, 1211.—

τοῖς χουσὶ γάρ τις ξυμβολὰς ἐπράττετο;

was, as Meier says, neither a gift nor a loan, but something between the two. Whether it was a debt recoverable at law, as Meier thinks, when the relieved party was in better circumstances, is doubtful.[1] It was at all events a debt of honour; and it was considered highly disgraceful for any man, who had accepted the bounty of his friends, not to repay them when he had the means. Club debts in general were among the first which an Athenian thought it incumbent on him to discharge. Even Leocrates, who deserted his country, sent a commission from Megara to his brother, desiring him to pay his club debts at Athens.

There were public laws applicable to the clubs, and courts of speedy justice enforcing their rules and deciding disputes which arose under them.[2] The president would be able to recover all sums which he had either an express or implied authority to advance; or he might be called to account for any misapplication of the common funds; or the members might sue one another for contribution. It is very likely that a more equitable kind of law was administered upon such trials. They were conducted by the Thesmothetæ.[3]

The formation of societies was common in the Greek republics. There were commercial, religious, and political societies.[4] That there should be political associations in cities where the spirit of party ran high, was a thing to be expected. Many, which had a different object at first, were diverted to political ends. Pisander and Phrynichus at Athens engaged the clubs to assist them in their project of overthrowing the democracy.[5] Lysander, to forward his own ambitious views, established clubs in Asia Minor. Thucydides, in commenting upon the violence of the Greek factions, expressly declares, that men felt a stronger attachment to their political associates than to their country.[6] A bond of union thus formed became stronger often than the ties of moral obligation, and led to mischievous consequences. The caballing in courts of justice, to which so much allusion is made by the orators, may be traced to the like source. A word, which (according to its natural import) might signify the whole preparation for conducting a cause, was understood often in a more limited sense

(1) The words of Isæus, De Hagn. Hered. 88, ἐξ ἐράνων ὀφλήματα εἰσπεπραγμένα, do not inform us as to the nature of the debts in question.

(2) Ἐρανικοὶ νόμοι—ἐρανικαὶ δίκαι. Plato disapproved of these, and would not allow them in his republic.

(3) Meier and Schömann, Att. Proc. 540.

(4) The religious associations were called θίασοι. See Böckh's Public Economy of Athens, transl. i. 328. Ἑταιρία was a general name for all associations. The political ones have a more invidious name given them by Thucydides; see the following note.

(5) Thucydides, viii. 54. Καὶ ὁ μὲν Πείσανδρος τάς τε ξυνωμοσίας, αἵπερ ἐτύγχανον πρότερον ἐν τῇ πόλει οὖσαι ἐπὶ δίκαις καὶ ἀρχαῖς, ἁπάσας ἐπελθὼν, καὶ παρακελευσάμενος ὅπως ξυστραφέντες καὶ κοινῇ βουλευσάμενοι καταλύσουσι τὸν δῆμον, καὶ τἆλλα παρασκευάσας ἐπὶ τοῖς παροῦσιν ὥστε μηκέτι διαμέλλεσθαι, αὐτὸς μετὰ τῶν δέκα ἀνδρῶν τον πλοῦν ὡς τὸν Τισσαφέρνην ποιεῖται.

(6) Thucydides, iii. 82. Καὶ μὴν καὶ τὸ ξυγγενὲς τοῦ ἑταιρικοῦ ἀλλοτριώτερον ἐγένετο διὰ τὸ ἑτοιμότερον εἶναι ἀπροφασίστως τολμᾷν· οὐ γὰρ μετὰ τῶν κειμένων νόμων ὠφελείας αἱ τοιαῦται ξύνοδοι, ἀλλὰ παρὰ τοὺς καθεστῶτας πλεονεξίᾳ.

to signify a troop of friends, who by their appearance in court, as well as by open intercession or pleading, endeavoured to influence the jury.[1]

Thirlwall in his History of Greece (IV. 36) gives a good description of the party feeling which these political associations engendered:—

"In most of the Greek states the ambition of individuals, or the conflict of parties, had given rise to a number of private associations, for purposes either wholly or mainly political, some attached to a single leader, others united by the common interests of the members. These clubs were of long standing at Athens. Cimon had formed one, which rallied round him as its centre, attracted not more perhaps by his fortune and abilities than by his principles, shared the reproach which he had incurred by his partiality for Sparta, and proved its devotedness to his person at the battle of Tanagra. It seems to have been by means of a similar union that Thucydides, the rival of Pericles, endeavoured to collect and guide the strength of the aristocratical party. It was so perhaps that Nicias and Alcibiades had been able to defeat the attempt of Hyperbolus. It was on his command over such associations that Alcibiades relied for the accomplishment of his ambitious designs. But there appear to have been many political clubs at Athens, which did not acknowledge any chief, but merely aimed at certain objects in which all the members were equally concerned. The defective administration of justice exposed unprotected individuals to vexation and wrong, but enabled a number who combined their fortunes and credit the more easily to shield each other, or to strike a common enemy. Another end, for which such coalitions were formed, was to control the elections for offices of trust and power, either with a view to self-defence, or to the extension of their influence. In every case both the object and the means, if not positively illegal, were such as the law did not recognise; the mutual attachment of the associates was stronger than the ties by which they were bound to the state, and even than those of blood; and the law of honour which generally prevailed among them required that they should shrink from no sacrifice and from no crime, which the common interest might demand. These associations therefore were hotbeds of seditious and revolutionary projects; and Phrynichus found it easy to engage them on his side; and, before he left Athens, he had organized an extensive conspiracy among them for the immediate subversion of the democratical government."

In the days of the Roman empire we read of institutions formed for benevolent purposes, although the government kept a watchful eye upon them, for fear of their leading to political combination, and did not allow the members to meet more than once a month. Trajan, in answer to a letter from Pliny, consulting him about such an institution in a city of Cappadocia, says:[2] "Amisenos, quorum libellum epistolæ tuæ subjunxeras, si legibus istorum, quibus de officio fœderis

(1) Παρασκευή. (2) Pliny, Epist. x. 93.

utuntur, concessum est eranos habere, possumus quo minus habeant non impedire; eo facilius si tali collatione non ad turbas et illicitos cœtus, sed ad sustinendam tenuiorum inopiam utuntur. In ceteris civitatibus, quæ nostro jure obstrictæ sunt, res hujusmodi prohibenda est." When the Christian communities were accused of factious intentions, because they met together and subscribed to a common chest, Tertullian answered, that the subscriptions were of small amount, and not for feasting, but for charity; "deposita pietatis, egenis alendis humandisque, et pueris ac puellis, re ac parentibus destitutis, jamque domesticis senibus."

The *gilds* or *guilds* of the Anglo-Saxons were associations for mutual contribution, to meet various exigencies arising from burials, legal exactions, mulcts, fines, and other payments. In mercantile towns and seaports there were gilds for carrying on commercial enterprise. They met in their *gihalla*, or guildhall. That of the burghers of Dover is mentioned in Domesday Book. The word is derived from *gildan*, to pay.

To enumerate the various clubs or societies which are established in this country for purposes of all kinds—for politics and for amusement, for feasting and for charity, for debating, gambling, building, money-lending, &c.—would be a difficult matter. Those which most nearly resemble the best sort of Athenian *erani* are, as I have said, our Friendly Societies, which are established for provident and benevolent purposes, chiefly for the benefit of the lower classes of people. A fund is commonly raised by voluntary subscriptions, out of which the members, their wives or children, relations or nominees, may be maintained or relieved in old age, sickness, widowhood, or orphanage, or upon any other contingency, the occurrence of which is susceptible of calculation by way of average. Sometimes sums of money are insured to be paid on the birth of a child or the death of a member, or for funeral expenses; or provision is made for granting pensions or emoluments at certain ages. Again, there are building societies for enabling every member to become the owner of a freehold dwelling house after a certain number of years. All these associations have been sanctioned by the legislature, which has made various enactments for their good government and for the security of the members; so that their funds may be safely invested, their accounts duly audited, and their officers subject to proper checks. Before any such society can be legally established, its proposed rules have to be sent up to the general registry office in London and examined by the registrar: if he approves of them, he gives a certificate, and thereupon they become the guiding rules of the society, and binding upon all parties concerned. One of the rules commonly is, that disputes among the members may be settled by arbitration. And now by the statute which consolidates the whole law upon the subject, the 18th and 19th Victoria, chapter 63, not only the magistrates, but the judges of the county courts, upon complaints preferred by members of Friendly Societies, are empowered to give equitable relief.

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CAMBRIDGE: DEIGHTON, BELL & CO.

1898.

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